CLERK'S COPY.

Volume 6

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

FEDERAL TRADE COMMISSION, PETITIONER

vs.

THE CEMENT INSTITUTE, ET AL.

No. 24

FEDERAL TRADE COMMISSION, PETITIONER

vs.

ARTNA PORTLAND CEMENT COMPANY, ET AL.

No. 25

FEDERAL TRADE COMMISSION, PETITIONER

vs.

MARQUETTE CEMENT MANUFACTURING COMPANY

No. 26

FEDERAL TRADE COMMISSION, PETITIONER

vs.

CALAVERAS CEMENT COMPANY, ET AL.

No. 27

FEDERAL TRADE COMMISSION, PETITIONER

vs.

HURON PORTLAND CEMENT COMPANY

No. 28

FEDERAL TRADE COMMISSION, PETITIONER

vs.

SUPERIOR PORTLAND CEMENT, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 20, 1947.

CERTIORARI GRANTED MARCH 10, 1947.

FEDERAL TRADE COMMISSION, PETITIONER

vs.

DEALERS CEMENT CO., ET AL.

No. 29

FEDERAL TRADE COMMISSION, PETITIONER

vs.

NORTHWESTERN PORTLAND CEMENT COMPANY

No. 30

FEDERAL TRADE COMMISSION, PETITIONER

vs.

RIVERSIDE CEMENT COMPANY

No. 31

FEDERAL TRADE COMMISSION, PETITIONER

vs.

UNIVERSAL ATLAS CEMENT COMPANY

No. 32

FEDERAL TRADE COMMISSION, PETITIONER

vs.

CALIFORNIA PORTLAND CEMENT COMPANY

No. 33

FEDERAL TRADE COMMISSION, PETITIONER

vs.

MONOLITH PORTLAND CEMENT COMPANY, ET AL.

No. 34

FEDERAL TRADE COMMISSION, PETITIONER

vs.

BOARD OF TRADE OF [illegible], ET AL.

INDEX TO VOLUME 6.

Pages 3543 to 4342.

TRANSCRIPT OF TESTIMONY.

Colloquy 3622, 3695, 4270
Identification of Exhibits 3716, 4144
Offer of Exhibits 4332

WITNESSES FOR THE COMMISSION (CONTINUED).

Testimony of:
Astell, Leonard K. 4293
Baird, H. L. 3842
Billingsley, Alexander G. 3619
Blom, E. W. 4156
Bretherton, T. O. 3799
Brobston, Joseph 3807
Brown, Travis 3833
Campbell, W. W. 3866
Cree, Harold S. 4100
Crapo, S. T. 3903, 3978, 4050
Dankel, J. L. 4035
Davis, Arthur E. 4029
Dorsch, W. F. 3848
Eysmans, Julien 3676
Foley, William H. 4186
Giessner, John A. 3589
Hamlin, Clarence A. 4210
Hansen, A. T. 4275

Hansen, H. N. 3846
Hayghe, William E. 3599
Holway, E. J. 3851
Ingley, A. H. 4142
Jennings, William James 3972
Jones, Wilburn S. 3610
Large, J. B. 3694
Lindahl, O. N. 4323
MacDonald, Donald P. 3634
MacFarland, David H. 4097, 4148
MacIntyre, Everette 3615, 3699, 3807
McKeag, James 4306
McKee, F. C. 3889
Peoples, Christian Joy 3643, 3708
Pfeiffer, E. J. 3842
Pickford, Frederick 3835, 4144
Pomeroy, William McLellan 3689
Runion, Phil 4242
Simpson, John P. 3543, 3593, 3616, 3631
Starr, W. T. 3854
Taylor, P. I. 3629
Vogel, William D. 4184
Warren, G. E. 3855
White, Hugh E. 3641

(Testimony of Witnesses contained in pages 9352 to 12316 of the Original Transcript.)

9352

Washington, D. C.,
October 25, 1938.

JOHN P. SIMPSON, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

9365 I am a rate clerk of the Interstate Commerce Commission. I have been with said Commission since 1927 and on my present duties since 1928. The duties that I performed and have performed are the checking of freight tariffs for the ascertainment of statements made therein for use in various cases before the Commission and for other cases. I have had 6 years railroad experience with the Potomac Yard Revision Bureau joint facility maintained by 6 carriers, including the Pennsylvania Railroad for the auditing of inter-line accounts. Four years
9366 with the War Department, settling transportation freight bills.

Q. I show you exhibit 994, being the North Carolina rate book, No. 3, effective December 5, 1935.

Will you examine the book and state the extent which you consider that book of value to a shipper from the shipping standpoint?

A. By "shipping standpoint" I presume you mean statements of charges to be paid on a specific shipment?

9367 Q. Have you dealt, Mr. Simpson, with shippers while you were employed by the railroad that you referred to?

A. While I was with the Government for four years I was auditing the bills from the standpoint of a shipper. We were paying exactly what the shipped paid. While with the railroads we were constantly dealing with the question of shippers.

Q. Do you find in that book, Exhibit 994, any routing?

A. I find on the title page a statement that the rates are on cement in carloads in cents per hundred pounds.

To take an example, I find on page 8 a rate from Birmingham, presumably Alabama, though not so stated, to North Carolina,—to Abattoir, North Carolina, of 26 cents. By which route that rate applies is not stated.

Q. Are there any routes stated in the book?

A. None that I can find.

Q. What is the meaning, what is the significance of that reference to that one case,—Abattoir, was it, North Carolina?

A. That was the first rate named in the book.

9368 Q. I see.

A. All others apparently are exactly identical.

Q. The lack of routing in the book, what effect did that have from the shipper's standpoint?

A. A freight rate is published—

Mr. Leisure: Just a minute, Mr. Simpson.

Note, again we are getting back to the same thing. He is asking him what effect that has with respect to the shipper. Again I point out that this man has never had any experience as a shipper. He has told us he is an auditor.

Trial Examiner Norwood: I think he can tell us what effect it has in determining the rates, of what value it would be, what effect on figuring the rates would be the absence of naming the route.

Mr. Leisure: I think perhaps if the question were confined to that he would be able to do that.

Trial Examiner Norwood: I will instruct him to answer from that aspect.

9369 A. In paying the freight charges on a shipment, it is necessary to take into consideration the commodity, the weight of the commodity, the form in which it is shipped, as in packages or in packages of a specific kind, or in bulk, the route over which it moves and the date of the shipment together with certain other features, but I mentioned a few of them.

This book shows that there is, citing again my example, a rate in some tariff—or purports to show, I should say, and I will ask the Reporter to correct it—that there is in some tariffs a rate from Birmingham, presumably Birmingham, Ala., to Abattoir, N. C., a rate of 26 cents a hundred pounds, and I see in the opening pages a statement of emergency charges which provides that this rate of 26 cents a hundred pounds should be increased 1 cent a hundred pounds, or become 27 cents a hundred pounds.

By Mr. Wooden:

Q. Mr. Simpson, is there any risk which the shipper would take by using those rates in that book, Exhibit 994, in the absence of knowledge as to what the routing was?

Mr. Leisure: Your Honor, just a moment.

Again we are asking this man to testify what a shipper would do, and I submit there is no showing he is qualified to testify on behalf of a shipper at all.

I object to the question.

9370 Trial Examiner Norwood: I think he can tell us, there, if he relied on that where he would run the risk of getting the wrong rate.

I take it the question is directed to that.

Mr. Wooden: That is correct, Your Honor.

A. I would state that from my experience that it is impossible to tell the charges to be paid on a specific shipment until such time as the route over which that shipment is tendered by the shipper is known.

By Mr. Wooden:

Q. Can you furnish any illustrations of that?

A. I refer to Pacific Freight Tariff Bureau, I. C. C. 1250 adjusted by M. A. Cummings, agent.

I am unable to offer this as an exhibit because it is a part of an official record of the Interstate Commerce Commission. This is a duplicate order which is in our file.

It shows that—

9371 The Witness: This copy is one of two copies in the Interstate Commerce Commission, and public true, official files. It is impossible to furnish these copies. I will be glad, however, to furnish a statement of the rates I quoted.

Will that be satisfactory?

Trial Examiner Norwood: Cite the page and book, and so forth.

The Witness: Yes.

9373 The Witness: Mr. White has just handed me a duplicate of the original tariff. I am going to cite only from the rate in effect on November 15, 1936. The rates that were in force on the date of this tariff.

Mr. Leisure: Now—

Trial Examiner Norwood: Is a copy of that available for the Respondent to examine here in my custody?

Mr. Wooden: This is a copy that, as I understand it, is in the permanent possession of the Commissioner.

Trial Examiner Norwood: Yes, but that copy may remain here a sufficient time—

Mr. Wooden: Oh, yes.

Trial Examiner Norwood: —for the Respondent to examine it?

Mr. Wooden: As a matter of fact, a number can be given to it, and then reference may be had to it.

Mr. Leisure: Your Honor, I want to object to this procedure. It seems to me it is incompetent and irrelevant to pick up some public document and cite it as an example and read it into the case.

I object to that.

Trial Examiner Norwood: No, this particular document he may examine him on it, or he may put it in testimony as an exhibit—certified copy of any part of it.

9374 Mr. Leisure: I see.

Mr. Wooden: Or he can refresh his memory from it.

Trial Examiner Norwood: He may refresh his memory from it.

Mr. Wooden: Yes.

Mr. Leisure: I am objecting to the materiality and relevancy of the document, itself, merely citing it as an example of something else; I do not think that is proper testimony.

Mr. Wooden: I am not offering it as yet.

Trial Examiner Norwood: No.

Mr. Wooden: I merely want to number it for identification.

Trial Examiner Norwood: I think you may proceed with that.

(The paper referred to was marked for identification as Commission's Exhibit 1313.)

Mr. Wooden: I am informed that upon the West Coast Respondents suggested that they offer—

Mr. Leisure: I don't believe that they did.

Mr. Wooden: —I believe the very same tariff.

Trial Examiner Norwood: On the record.

Have you given the paper an identification mark?

9375 The Reporter: It has been marked for identification Commission's Exhibit 1313.

Trial Examiner Norwood: You may proceed.

By Mr. Wooden:

The witness identified Com. Ex. 1313 as appearing to be a copy of Pacific Freight Bureau Traffic No. 88 P. issued by M. A. Cummings, Agent, I. C. C. No. 1250, the original of which, he finds from the records of the Interstate Com-

merce Commission, was filed with that Commission on October 10, 1936. It appears to be printed off the same plate, and a duplicate of the documents that he previously referred to.

Q. Well, now, further describe the instance that you started to describe a while ago.

A. Yes.

9376 Trial Examiner Norwood: Can you refresh your memory from that document and testify accurately to the best of your knowledge and belief as to those freight rates?

The Witness: I was going to cite a case—three cases.

Trial Examiner Norwood: Yes.

The Witness: In which rates were different over one route than they were over another. It would be impossible for me to do it other than to read from the record.

Trial Examiner Norwood: Yes.

The Witness: Because I haven't got a typed statement.

Trial Examiner Norwood: The objection is overruled.

A. On page 42 of this schedule, opposite index No. 4545—

9378 The Witness: If the Examiner will permit me to cite an example and give a statement later, because I haven't a prepared—

Trial Examiner Norwood: I think he may give an example that, you say, might be more informative, but we have to discuss the best that we can get.

A. I have in my possession a duplicate copy of Southern Freight Tariff Bureau freight tariff 341-B, which was filed with the Interstate Commerce Commission on October 8, 1936, under Agent Roy Pope, I. C. C. No. 105. This publication is called the Southern Cement Tariff, and names rates on cement in carloads from points in Alabama, Tennessee, and other Southern States to virtually all southern and adjacent states.

Mr. Zimmerman: Could I look at it a moment?

The Witness: Certainly.

By Mr. Wooden:

Q. Now, do you have any instances that you can point out in the tariff that you just referred to, illustrating your point, and a lack of routing?

A. I probably could, I prepared none, but if the 9379 Examiner would give me about two minutes I think I can find one—

Q. Of course, I wanted you to finish your statement about California.

Trial Examiner Norwood: May we take a little recess and figure that out?

Mr. Wooden: I would like to have the witness complete his description of the California case.

Trial Examiner Norwood: Go ahead.

Mr. Wooden: That he was deciding.

The Witness: All right.

Mr. Wooden: I do not want to be side-tracked upon that.

Mr. Zimmerman: May we be off the record for just a moment?

Trial Examiner Norwood: On the record again.

The Witness: Shall I answer the question again?

Trial Examiner Norwood: Yes, read the previous question.

(Question read as follows:

"Q. Now, do you have any instances that you can point out in the tariff that you just referred to, illustrating your point, about lack of routing?")

A. Reverting to Pacific Freight Tariff 88-P, I 9380 found that on page 42, opposite index No. 4545, and under the column captioned Cowell, Calif., that there is noted a rate of 10½ cents from Cowell, Calif., to Sebastopal, S-e-b-a-s-t-o-p-a-l, Calif., by route 3 below, and a rate of 13½ cents from and to the same points by route 4 below.

Mr. Zimmerman: Wait a moment.

Here is this Sebastopal in the first column. Now, 13½ is here (indicating). Where is your route 3?

The Witness: Route 3 is explained by B. P. & C. R. R., Port Chicago, California, Southern Pacific Company, Shelville, Calif. Northwestern Pacific Railway, Santa Rosa or Petaluma, Calif.; P. & S. R. R., route 4 is explained B. P. & C. R. R., Port Chicago, Calif., Atchison, Topeka & Santa Fe Railway, Tiburon, T-i-b-u-r-o-n, Tiburon, I believe it is pronounced, California, Northwestern Pacific Railway, Santa Rosa, Calif., and the P. & S. R. R.

Now, to cite my illustration, if a shipper were solicited by the Santa Fe Railroad for that shipment, and he directed the shipping of that carload of freight over the Santa Fe, the agent of the B. P. & C. Railroad would be duly bound to tender that shipment to the Santa Fe, and the agent of the P. & S. R. R. at Petaluma, Santa Rosa—the name of it is—would be duly bound to copy freight charges

at the rate of 13½ a hundred pounds even though there
9381 was a rate of 10½ cents via another route.

To cite another example out of the same schedule, on page 57 of this document—

By Mr. Wooden:

Q. Is that the document which has been marked for identification—

A. Yes.

Q. —1313?

A. Yes, sir.

Q. Thank you.

Mr. McFadden: No, it is the other number, the first number.

Mr. Zimmerman: 1313 is right.

Mr. Bond: That is correct.

The Witness: Now, I will ask the Reporter to read what I just said.

(Answer read as follows:

"To cite another example out of the same schedule, on page 57 of this document—")

A. (Continued) In the center of the page will be found rates from Colton, Calif., and other stations via Santa Fe, the Union Pacific, and the Pacific Electric Railroads, respectively.

By referring to index No. 2170 it will be found
9382 that a shipment to Seligman, Ariz., might be routed —might be tendered, I should say—might be tendered either of those three carriers at Colton, and a rate would be 30½ cents per hundred pounds.

If, however, a shipment were going to Kingman, Ariz., it will be found by referring to index 2150 that a rate on the shipment tendered the Santa Fe Railroad, or the Pacific Electric Railroad, is also 30½ cents. No rate is shown on a shipment tendered the Union Pacific Railway.

I might state I made a search of the tariffs of the Union Pacific Railway and was unable to find that rate in any tariff over the Union Pacific Railway.

Q. You mean as of what time?

A. As of November 15, 1936.

Q. Do you have any other illustrations out of that particular tariff?

A. That is all I have on that particular tariff.

Q. Will you now revert to the North Carolina matter?

A. I believe the Counsel for the Respondent—

Trial Examiner Norwood: You want a few minutes to figure that North Carolina rate?

The Witness: I think it would be better.

9383 A. I find that for quick checking, a better illustration would be the first rate named on page 9.

Mr. Zimmerman: Page 9 of what?

The Witness: Of the North Carolina rate book.

By Mr. Wooden:

Q. Exhibit 994.

A. Exhibit 994; yes, sir. That purports to show a rate from Wilmington, presumably North Carolina, to Abattoire, of 11 cents, and by referring to the emergency rates that rate will be shown as 11.77 cents.

I might state that from recollection, and I do not have the emergency tariff with me, that is incorrect. There are no rates in the emergency tariff in units other than a whole cent or a half cent. However, to get the correct rate from Wilmington, N. C.—

Mr. Zimmerman: Excuse my interruption, but what is it you said was not correct?

The Witness: The emergency charges as shown in the North Carolina rate book at page 3.

Mr. Zimmerman: Are not correct.

The Witness: Are not correct.

9384 Mr. Wooden: May I interject a question there?

By Mr. Wooden:

Q. Would you say that wherever emergency rates appear in the book in less than—what is it, half cent or—

A. In units other than even cents or half cents.

Q. —that it is not the exact rate?

A. I would; yes, sir.

Q. It is not merely applicable in North Carolina, but generally?

A. It is applicable generally,—and I am only speaking of interstate commerce.

Q. Yes.

Trial Examiner Norwood: Do you find more than one rate between those two points?

The Witness: I find that there is a rate named from Wilmington to New Bern of 11 cents, which is subject to a reference mark, which is explained on page 8 of this document. That is, I am speaking now of the tariff 105.

9388 Q. Now, Mr. Simpson, the document on which you based your last testimony has been marked for identification as Commission's Exhibit 1314 and consists of page 175 of a certain tariff. Will you state what tariff it is?

9389 The Witness: May I explain, the rest of these, including this one, I have for cross-examination of a certain statement that I have here.

By Mr. Wooden:

Q. All right, Mr. Simpson, will you proceed with the testimony?

The Witness: May I have the question read?

(Question read.)

A. The tariff is as previously stated, Southern Freight Tariff Bureau, freight tariff 341-B, I. C. C. No. 105, issued by Roy Pope, agent of the Freight Tariff Bureau, and having been filed with the Interstate Commerce Commission on October 8, 1936, under file No. 44037.

I will state for the advantage of the Respondents, that stating the name of the agent and I. C. C. number will identify the document in our files.

Q. Can you pick up the testimony started regard-

9390 ing that page?

A. Yes. There is on page 115 of the same document a statement that the rate from Wilmington to New Bern, which are the same points covered by the North Carolina rate book, Exhibit No. 994, a rate of 11 cents.

However, that has a reference mark, single dagger, which is explained on page 8, the basis shown in Roy Pope's tariff 389, Southern rate basis, I. C. C. A-725, J. H. Glenn series, are not applicable with the rates bearing this reference.

However, I have found by examination of Agent Leland's open and prepaid books, I. C. C. No. A-17, effective April 15, 1937—

9393 Q. State what you found.

A. I refer to an official list of open and prepaid stations, No. 53, filed with the Interstate Commerce Commission on about April 1, 1938.

I do not have the exact filing date on this copy under I. C. C. No. A-18 by F. A. Leland, agent.

On page 511 of this document I find that Abattoire, N. C., is located between Wilmington and New Bern and is immediately adjacent to New Bern yard, which, in turn, is immediately adjacent to New Bern.

It is evident, therefore, that the mileage to Abat-
9394 toire, is substantially the same as that to New Bern.

I do not have with me the distance table of the Atlantic Coast Line. However, I believe that the rate of 11 cents, as shown on page 175 of Agent Pope's I. C. C. 105 is a distance of over 80 and up to and including 90 miles is correct as shown in the North Carolina rate book.

Mr. Zimmerman: Now, referring to Commission's Exhibit 1314.

The Witness: Yes, sir.

Mr. Wooden: North Carolina rate book.

The Witness: Yes.

Mr. Zimmerman: 175 of that exhibit.

The Witness: Yes, sir.

Mr. Wooden: North Carolina rate book is Exhibit 994 in this case.

9395 A. (Continuing) It will be found that by referring to I. C. C. No. 105, page 186—

Mr. Zimmerman: Won't you refer to it as Exhibit number, please?

9396 A. (Continuing) Exhibit No. 1314—

Mr. Zimmerman: Thank you.

A. —page 186, item 1520, which will also be put in evidence, by way of an exhibit, the following phraseology:

9398 The Witness: Page 185 of Commission's Exhibit 1314. That respects movement over the L. & N. Railroad to routes named in L. & N. tariffs, G. F. O. 231-B, I. C. C. No. A-16056, which is also found in the public file of the Interstate Commerce Commission.

A shipper routing a shipment via any other route would not get the benefit of the rates named in the North Carolina rate book.

By Mr. Wooden:

Q. Would the converse of that be true—

A. Now, here is—

Q. Pardon me. Would the converse of that be true, when a shipper shipping by the North Carolina rate book would not get the benefit, that is—

A. The North Carolina rate book named only rates, and how those rates apply is not stated, so far as found in a cursory examination of the book.

Trial Examiner Norwood: Well, have you found that those are the lowest rates between those points?

The Witness: I have made no examination of this schedule, so I am unable to state, except one or two points, and I recited those early in my testimony.

9399 The Witness: The emergency is incorrectly stated.

Mr. Zimmerman: Leaving that out of the question.

Trial Examiner Norwood: How is that?

Mr. Zimmerman: I am asking him about the rates stated in the book.

The Witness: Unfortunately, I do not have with me the tariff in force on September 5, 1935; however, I know of no change between that date and November 16, 1936, and the rate was found to be the same.

Mr. Zimmerman: And that would indicate that those were the lowest rates?

The Witness: That would indicate that those were the lowest rates via such route.

Mr. Zimmerman: Yes.

The Witness: But not on all routes.

By Mr. Wooden:

Q. Between those two points only?

A. Between those two points only, yes.

I am referring for other examples to page 187 of Commission's Exhibit 1314,—I find this provision: "Rates published in this tariff except from or to points reached by the Buffalo Union Carolina Railroad are not applicable via Seaboard Airline or Southern Railroad in connection with Buffalo or Union Carolina. Should a shipper route his shipment by Seaboard or Southern to the

9400 points on the Buffalo Union Carolina he would not get the benefit of the rates named in this Exhibit 994. And there are some 20 pages of these routing, Mr. Examiner.

Trial Examiner Norwood: Yes.

By Mr. Wooden:

Q. If there were an intermediate point there between the two points that you have named, would it mean that a shipper there would have no alternative but to ship over the single route that is available?

A. May I ask you to explain your question?

By Mr. MacIntyre:

Q. Mr. Simpson, you just outlined in your last answer that routing between the two points in question over a particular railroad would be over alternate routes?

A. Yes, sir.

Q. And that in the North Carolina rate book there would be a different route,—I mean, a different rate from that specified in Commission's Exhibit for identification 1314.

Now, if you take an intermediate point between
9401 those two points that you named, one nearest the destination, it could not help, an alternate routing would have to be over the two railroads you have named, is that not true?

A. I do not quite understand your question.

Do you mean a point intermediate from the origin, or a point intermediate to the destination?

Q. Intermediate to the destination.

A. Intermediate to the destination and not located on the Buffalo Union Carolina Railroad should move, so far as that particular item is concerned, by any route.

9402 Q. I am talking about on that particular railroad intermediate to the destination point.

A. That is the rule that applies to all points on the railroad.

Q. It could only move by that one route?

A. By route other than the Seaboard or Southern in the case of the Buffalo Union Carolina Railroad.

Q. But as to that there would be no alternate?

A. And as to points on the Atlantic Coast Line, it is restricted to apply only over points on the Atlantic Coast Line; those restrictions apply to all points on those two lines.

Q. Mr. Simpson, do you have any other illustrations available there?

A. Yes.

Q. This may go on for some time.

A. Without burdening the record with additional routing provisions, this applies—again referring to Commission's Exhibit 1314, which names the official rates applicable on cement from and to points in North Carolina, it applies only on cement, hydraulic, natural or Portland, straight or mixed, carload shipments with a minimum weight of 50,000 pounds, excepting as noted, except when

for carriage convenience a car of less capacity is furnished, the minimum weight will be the market capacity of a
9403 car, but not less than 40,000 pounds. That information is not shown in the North Carolina rate book as to the minimum weight which is the component part of the rate, and which has as much importance as the level of the rate, the 11 cents in the instance last cited.

Q. Can you say how much difference it would make in the actual rate as to whether you know the minimum rate?

A. To cite a specific example, if a shipper shipped 30,000 pounds of cement to fill a specific contract, he would assume from referring to the North Carolina rate book that he would pay $33. However, on getting his freight bill, if the carrier followed the tariff, as they would, he would get a freight bill of $55.

Q. Now, are the illustrations that you have given, are they exceptions, or would you say that similar considerations as to the routing and as to the minimum weights apply generally?

Mr. Leisure: Oh, I think that is too broad a question. If he has certain things he wants to point out here, he may do so; but some general indictment of the entire industry on this witness' testimony, I do not think that is a proper question. I object to it.

Trial Examiner Norwood: Read the question.

(Last question read.)

Trial Examiner Norwood: The objection is overruled.

A. The exception as to minimum weight will ap-
9404 ply on every shipment made from any point if that shipment consists of a lesser quantity than the minimum weight specified in the rate tariff.

The exception as to routing applies in every case where the origin shown in the caption of the various pages of Exhibit 994 is served by more than one tariff.

By Mr. Wooden:

Q. You do not mean, then, I take it, to confine your testimony to the particular cases you have cited in the particular States. Can you make that apply to the country at large?

A. Looking over this rate book, because I have it in front of me—

Q. Rate book.

A. The exhibit 994.

Q. You mean the North Carolina rate book?

A. Yes, sir. I find that on pages 8 and 9, the opening pages, that rates are named from Birmingham, which is served by the Atlanta, Birmingham and Coast, the Central of Georgia, the Southern, Georgia, and other railroads, Ironton, which is served by the North & Western, and the C. & O. Charleston, which I presume is Charleston, W. Va., which is served by several roads—or may be Charleston, S. C., I do not know, but that is also served by several roads; Washington, which may be North Carolina, and is served by one, or it may be Washington, D. C., and served by several; Wilmington, served by
9405 two railroads, Atlantic & Seaboard; Chattanooga, which is served by several railroads. I presume it means Chattanooga, Tenn.

Kingsport, Tenn., is served by at least three railroads.

Knoxville, Tenn., is served by two or three railroads.

Nashville is served by some three railroads.

Those are samples of the rates named in the tariff, which may or may not be correct because of the routing instructions.

Q. Mr. Simpson, are there circumstances that arise under which rates are changed under very short notice?

A. The Interstate Commerce Act requires that 30 days' notice be given of a change in a rate, unless the Commission, for cause shown, gives a permission to the carrier to change it on less than 30 days' notice. The Interstate Commerce Commission issues, however, numerous orders authorizing the carriers to change rates on less than 30 days' notice, for changes shown. Some of these orders permit filing on as short as one day's notice, and the carriers usually take advantage of these orders.

Q. Did you make any study of the rates to Boone, N. C.?

A. Yes, sir; from two points, Kingsport and Ironton.

Q. Kingsport and what?

9406 A. And Ironton.

Trial Examiner Norwood: Ohio?

The Witness: Yes, sir.

By Mr. Wooden:

Q. Did you check the rates to Boone, N. C., from those points—

A. I did—

Q. —to ascertain whether the rates in the North Carolina Rate Book, Exhibit 994, were correct?

A. I checked those rates over a period of years, and prepared an exhibit. I did not have the North Carolina Rate Book, but will be glad to make that check right now if you have that exhibit with you that I prepared.

Mr. Wooden: Will you mark this paper for identification?

(The document referred to was thereupon marked for identification "Commission's Exhibits 1315-A and 1315-B.)

The Witness: Will you mark that in pencil?

By Mr. Wooden:

Q. What are the papers that I hand you, two sheets, marked Commission's Exhibits 1315-A and B, for identification?

A. This is a statement of commodity rates on Portland cement, carloads, from Ironton, Ohio, to Boone, Foscoe, Hodges Gap, Hollar, H-o-l-l-a-r, Shulls Mills, Towns-
9407 end, and Valley Creek, North Carolina, in force on and since July 1, 1936, as named in Agent Speiden's, now Miller's, I. C. C. No. 1626, and his 105. The 105 has been introduced for identification as Commission's Exhibit 1314.

Q. Now, what do you find from your check on those rates compared with the North Carolina freight rate book?

Mr. Zimmerman: May I interrupt just a minute?

Does this North Carolina freight rate book—may I look at that?

The Witness: Yes, sir, (handing).

Mr. Zimmerman: —Exhibit 994, purports to be complete and cover the same period of time as the study contained in Exhibit 1315-A and B?

Mr. Wooden: I cannot answer your question, Mr. Zimmerman. It may appears possibly from the testimony of another witness.

Mr. Zimmerman: Well, I should think unless and until it did appear that it would not be proper to ask this witness for his conclusions. In other words, you must have a parallel for your comparison.

The Witness: The North Carolina rate book purports to name certain rates on cement carloads in cents per hundred pounds to points in North Carolina, as published

in tariffs on file with the Interstate Commerce Commission and the Railroad Commission of North Caro-
9408 lina, effective December 5, 1935.

On page 20 of this document I find a rate name of 20½ cents from Ironton to Boone.

On page 3 there is a provision that there will be in force an emergency charge of 1 cent, which will make the total charge of 21½ cents.

Trial Examiner Norwood: Well, now, does that cover the same period that the rate book covers?

Mr. Zimmerman: The same period as his study?

The Witness: No, sir.

Mr. Wooden: We will have to come to that point, Your Honor.

Mr. Zimmerman: Well, I will object to the witness making any statement of comparisons where there is no coincidence of date. The tariffs referred to should be as of the same date.

Mr. Wooden: The point has to be covered. I agree with you there.

Mr. Zimmerman: Well, then, why go into a point—

Trial Examiner Norwood: On these two different points there are two different rates, depending on the routes.

Mr. Zimmerman: But there are different dates.

The Witness: I find, Your Honor, that I will be unable to answer this question at this time. If you care to,
9409 I will give it to you later.

Trial Examiner Norwood: All right.

The Witness: I do not have the rates on that date. So I withdraw that.

By Mr. Wooden:

Q. Did you make any check, Mr. Simpson, to ascertain whether the rates shown on Exhibit 1315-A and B, for identification, had been in effect prior to the first date shown on that paper?

A. I did, but I cannot state from recollection far enough back to definitely state that the North Carolina rate book is or is not correct on that particular figure.

Q. As of the date of that book?

A. As of the date of that book.

Mr. Wooden: Give this the next number, please.

(The document referred to was thereupon marked for identification as Commission's Exhibit 1316.)

Trial Examiner Norwood: What are the pages of that?

Mr. Wooden: I have in my hands a collection of the correction sheets issued by the Cement—

Trial Examiner Norwood: They are bound together.

Mr. Wooden: They are bound together, and supplementing their printed issues. This was furnished by Counsel for the Respondents as a compilation of the 9410 correction sheets.

I would like to offer that and ask that further identification be waived.

Mr. Zimmerman: Counsel for the Institute, you said?

Mr. Wooden: Yes. And that will cover the question raised by Mr. Zimmerman.

Mr. Leisure: You have reference to the correction sheets of the North Carolina book?

Mr. Wooden: They include supplementary sheets to the North Carolina book, as I understand it.

Mr. Leisure: You mean that is what it is? It does not purport to be correction sheets for others, just for the North Carolina book; is that right?

Mr. Wooden: That is what it is, yes. It is not a list of all correction sheets, no.

(There was a discussion off the record.)

Trial Examiner Norwood: Now, is there any objection to the proffer?

Mr. Leisure: Yes, Your Honor. We furnished all of the correction sheets, and they have taken a part of them and bound them and are offering that part in evidence. It seems to me that the correction sheets should go in—in the interest of having an orderly record, they should all go in at one time instead of picking out one part and binding it and offering it.

9411 Trial Examiner Norwood: Any further objection?

Mr. Zimmerman: Well, if they were all the correction sheets— Do you know at this time if these are all the correction sheets on North Carolina, Mr. Leisure? Are you satisfied of that? What we are trying to do is to get a complete instance.

Here is a North Carolina rate book. Now, presumably there has been a study made of the official railroad tariffs that this book and the correction sheets and additions are based upon.

Trial Examiner Norwood: Yes.

Mr. Zimmerman: Then they will draw conclusions from

that comparison, the book is or is not correct, or it errs in this or varies in that.

Now, naturally, if we are to have such a comparison, the book must be complete. In other words, if they are going to say, "Now, we have looked at the railroads' official tariffs, and this is the figures that we got from them, and now we want to compare it with this book," the book has to have all of the correction sheets up to the time of the completion of this study—that is, for the period for which the study is made, or the study is worth nothing.

I am only interested in getting the study in such shape that we will find it correct.

9412 Trial Examiner Norwood: Why not consider it a partial study of a part of these rates or a part of these corrections, and put it in for what it is worth? As to the weight of it, if it is not complete, if one side puts in a part of it, the other side may put in the other part.

Mr. Zimmerman: Oh, there is no difference between Mr. Wooden and us. He is just as anxious as we are to have it complete.

Trial Examiner Norwood: Are there any further objections to the exhibit?

9413 Trial Examiner Norwood: On the record.

The objection is overruled and receive the document marked 1316 containing the 7 bound pages.

I will ask the Reporter to number those pages in ink.

(COM. EX. 1316 was offered and received in evidence.)

Mr. Wooden: I take it, as far as identification is concerned, that is waived.

The objection does not go to the lack of identification at all.

Mr. Leisure: No. Mr. Leisure has stated these are the records we furnished him. I have no question about that but I am interested in knowing whether these are all the records.

By Mr. Wooden:

Q. The way I understand, Mr. Simpson, that exhibit 1315-A and 1315-B, for identification, is part of the original record of the Interstate Commerce Commission?

A. That is a copy of a letter furnished—it is a carbon of a memorandum which accompanied a letter fur-

9414 nished over the signature of either the secretary or the chief of the section of tariff, but I have forgotten

which, quoting certain rates which were found in tariffs on file at the Interstate Commerce Commission.

Mr. Zimmerman: The last thing you referred to was what number?

The Witness: 1315-A and -B.

Mr. Wooden: Mark this for identification, please.

(The document referred to was marked Commission's Exhibit No. 1317, for identification.)

Mr. Wooden: Your Honor, in view of the fact that 1315-A and -B are from the files of the Commission and are to be returned to the I. C. C., is that correct, Mr. Simpson?

The Witness: That is correct; yes, sir.

Mr. Wooden: But I have here a photographic copy of 1315-A which I will offer in lieu of it and I think it might be given the same number, 1315-A, instead of 1317.

Trial Examiner Norwood: Yes.

Mr. Wooden: I also have a copy of the 1315-B sheet.

Trial Examiner Norwood: It may be substituted.

(Thereupon photographic copies of Exhibits 1315-A and 1315-B, were substituted for the originals.)

9415 Mr. Wooden: I will offer at this time the photographic copies of 1315-A and -B for identification.

Trial Examiner Norwood: Any objection?

Mr. Hershberger: I haven't seen them, yet. I would like to take a look at them.

(Various Counsel examine documents.)

Mr. Leisure: Could I ask a question on the voir dire?

Trial Examiner Norwood: Certainly.

Examination Voir Dire.

By Mr. Leisure:

Q. Mr. Simpson, what were the circumstances under which this document was prepared, 1315-A?

A. That document was first prepared by another rate clerk in the Interstate Commerce Commission at the request, I believe, of the Federal Trade Commission, or one of its employees.

I was requested by an employee of the Federal Trade Commission to check that for its accuracy in order that I might be able to answer any questions propounded about it.

I did make such check and found every statement therein to be correct.

Q. You were not personally requested to prepare it?

9416 A. Not in the first instant, but I was asked to recheck it.

Q. Do you know what the instructions were in the preparation of it?

A. To name the rates between those points.

Q. Between these designated points?

A. Yes, sir.

Mr. Zimmerman: May I ask a question, Your Honor, in voir dire?

Trial Examiner Norwood: Certainly.

By Mr. Zimmerman:

Q. May I ask if you know, Mr. Witness, why the towns of Boone, Foscoe, Hodges Gap, Hollar, Shulls Mills, Townsend and Valley Creek were selected?

A. I was told at the time I rechecked it back, and I can only testify from personail knowledge as to that—but the question wanted was first the rates from Ironton to Boone and second a list of the stations taking the same rate as Boone. Those stations are named in Glenn's freight tariff No. 89-B, known as the Southern rate basis.

Q. Is there an exhibit number for that?

A. No, sir. And filed with the Interstate Commerce Commission by Agent J. S. Glenn as I. C. C. No. O-725. It was filed August 6, 1929, with the Interstate Commerce Commission and that states on—

Q. You understand my question, as to how those

9417 stations happened to be chosen?

Mr. Wooden: He has already answered it, it seems to me.

Mr. Zimmerman: I thought he had, too, but why all this extra matter?

The Witness: That publication shows, page 225, Valley Creek, Foscoe, Townsend, Hodges Gap, Shulls Mills, Hollar, and Boone are towns in North Carolina on the Linville River Railway Company and on shipments from points in any southern state take Boone, North Carolina rates.

Mr. Zimmerman: Do you still know why those towns were chosen? Why was Boone chosen, if you know?

The Witness: I do not.

Mr. Zimmerman: Who chose it?

The Witness: Somebody in the Federal Trade Commission.

Mr. Wooden: He has testified he was asked to finish it for those towns.

Direct Examination (Continued) by Mr. Wooden.

Q. Now, Mr. Simpson, referring to Exhibits 1315-A and B which I believe have been received?

Trial Examiner Norwood: No.

Mr. Wooden: What is the ruling?

9418 Trial Examiner Norwood: They were simply asking questions on the voir dire.

Is there any objection?

(No response.)

Trial Examiner Norwood: Received as marked.

(COM. EX. 1315-A and 1315-B was offered and received in evidence.)

Q. Referring to Commissions Exhibit 1315-A and B, and to Exhibit 1316 and the correction sheets therein of the Cement Institute to the North Carolina Freight Rate Book No. 3, which is Exhibit 994, and which correction sheet shows was issued December 16, 1936, can you tell us whether the rates between the points named in Exhibit 1315-A and B, how they compare with the rates given during the same period of time, or during part of the same period of time with the correction sheets, Exhibit 1316 and Exhibit 994?

9419 Mr. Zimmerman: For the same towns.

A. I have made no previous study of this book. I have never seen it before, so—

Mr. Zimmerman: There is nothing concealed up his sleeve.

A. Correction No. 28 to the Commissions 1316 shows that the rate from Ironton to these seven stations, effective on January 16, 1937, is 18½ cents. This was issued December 13, 1936.

(Indicating) That is January 16, 1937.

According to the exhibit prepared in our section of tariffs—that is, the Interstate Commerce Commission's section of tariffs—the rate was 17½ cents named in supplement 5 to Agent Miller's I. C. C. 105. Agent Miller and Pope are one and the same; one succeeded the other. It was previously described as Exhibit 1314.

Supplement 5 to that tariff shows that the rate from Ironton, Ohio, to Boone, N. C., is 17½ cents. That has four reference marks.

Trial Examiner Norwood: What page were you just reading from?

The Witness: Supplement 5, page 4.

A. (Continuing) These reference marks are tear drop, which is explained "Reduction"; small letter "n," which gives a disposition advice, authority of the Southern
9420 Trade Association and is not material to the case.

An encircled "6," which is explained on carload traffic, add 1 cent to cover transfer from standard to narrow gauge equipment.

By Mr. Wooden:

Q. As I understand it, Mr. Simpson, the correction sheets, Exhibit 1316, show 1 per cent per hundred weight higher rates—

A. There is no one of this table shows the 1 cent. Add 1 cent—

Mr. Zimmerman: When you say "this table," what are you referring to?

Mr. Wooden: 1315-A and B.

A. The rates are the same in the 1316 as they are in 1315.

By Mr. Wooden:

Q. With one exception.

A. The rates are the same. One cent is added.

Mr. Zimmerman: So far there are no hits, no errors, and no runs yet?

The Witness: No hits, no errors, and no runs.

By Mr. Wooden:

Q. How about the emergency charge? Is that included in either or both of those—

A. The emergency charge expired July 1, 1936, and amounted to 1 cent.

This purports to be effective January, 1937—that is,
9421 I am referring to 1316—and would not be involved.

Q. Now, will you tell us what the situation was on subsequent dates to the one you have named?

A. To give the entire rate as they—and I do not know exactly which point you are interested in—to give the entire rate as taken from the period July 1, 1936, to December 31, 1936, the charge actually made the shipper was at the rate of 21½ cents per 100 pounds.

Mr. Zimmerman: From—

A. (Continuing) From Ironton, Ohio, to each of the seven stations named.

The charge is composed of a rate of 19½ cents per hundred pounds, and an emergency charge of 1 cent per hundred pounds, and a transfer charge of 1 cent per hundred pounds for transfer services at Johnson City or Elizabeth City. On January 1, 1937, the rate was reduced 1 cent and by reason of the expiration of the emergency charge, leaving a rate of 20½ cents composed of a 19½-cent rate plus a 1-cent transfer.

By Mr. Wooden:

Q. How did that compare with the rate shown in the correction sheet?

A. What record?

Q. On Exhibit 1316.

A. This is January 15. On January 5, 1937, that rate was further reduced 2 cents, making a gross rate of
9422 18½ cents, which is effective January 5, 1937. According to the correction sheet that you have handed me, the document 1316 shows a correction as of January 16, 1937. Whether that was later corrected to show the earlier date or not, I do not know.

Mr. Zimmerman: There may have been a correction sheet either earlier or later, and you wouldn't know it, would you?

The Witness: Absolutely.

Mr. Wooden: If there was such a correction sheet we would be glad to have it.

Mr. Zimmerman: Surely. Of course you would. We would, too. We don't, any of us, know whether this is complete or not.

The Witness: I might, or the benefit of the record, state that this change of 20½ cents to 18½ cents was first published in supplement 4 of Agent Pope's I.C.C. 105 with an effective date of January 16, 1937, and was filed with the Interstate Commerce Commission on December 10, 1936.

However, in supplement 5, filed with the Commission December 22, 1936, the rate was advanced to January 5, 1937, under such a permission as I have previously described, a special permission.

9426 Q. Mr. Simpson, when we recessed at noon you were in the midst of an analysis of Commission's

Exhibit 1315-A and B, a comparison between it of the North Carolina rate book and the correction sheets.

A. I do not recall just how far I had proceeded. As it is not every long I will start from the beginning.

On July 1, 1936, until December 31, 1936, there were in force from Ironton, Ohio, to Boone, Foscoe, Hodes Gap, Hollar, Shulls Mills, Townsend, and Valley Creek, North Carolina, a rate of 21½ cents of cement in carloads over certain routes. That rate was computed by adding on a base rate of 19½ cents per hundred pounds below to an emergency charge or surcharge of 1 cent per hundred pounds, and a transfer charge to cover the transfer from standard to narrow gauge equipment at Johnson City, or Elizabethton, Tenn., of 1 cent per hundred pounds.

That rate remained in force until December 31, 1936, when the emergency charge of 1 cent per hundred pounds published in Roy Pope's I. C. C. No. 3 expired by reason of the expiration date carried on the title page of supplement 9 thereto.

The rate then became 20½ cents, which rate remained in force for only four days.

On January 5, 1937, the aggregate rate was reduced to 18½ cents, composed of 17½ cents, line haul shown in 9427 supplement 5 to Agent Pope's I. C. C. 105.

Mr. Leisure: Now, you are reading the exhibit numbers where there are any?

The Witness: I will. The exhibit number of that is 1314, if the Reporter will correct that.

Mr. Leisure: Right.

The Witness: Plus the transfer charge of 1 cent per hundred pounds.

I might state that the supplement to the rate book which was placed in my possession—

By Mr. Wooden:

Q. Just a moment: Is that Exhibit 1316 (indicating)?

A. Exhibit 1316; yes, sir (referring to papers); shown on page 28, which is also known as correct number 28. I am speaking of Commission's Exhibit 1316. The change taking place on January 16, 1937.

Perhaps I might explain that the change from 19½ to 17½ cents was first published in supplement 4 to Agent Pope's I. C. C. 105, Commission's Exhibit 1314, as effective January 16, 1937; however, in supplement 5 filed by the Commission on December 22, 1936, that rate was re-

produced with an advanced effective date of January 5, 1937, with a note that was issued on 10 days' notice under permission of the Interstate Commerce Commission No. 157741.

9428. Q. So that, as I understand it, for a number of days—you can state the number—the rate shown in the correction sheets was higher by two cents a hundred than the rate actually then in effect?

A. So far as this particular sheet shows, it was for a period of 11 days, the rate was two cents higher than that named in the tariff.

Q. All right. Will you go on with the next?

A. On the rate of 18½ cents, thus computed as previously described, that remained in force until November 15, 1937, when the rate became 19½ cents, consisting of a line haul rate of 18½ cents, representing the increase of one cent allowed under ex parte 115 of the Interstate Commerce Commission over the 17½ cents rate, plus the transfer charge. That rate remained in force until March 27, 1938.

On March 28, 1938, the increases permitted by the Interstate Commerce Commission under ex parte 123 became effective, and the rate became 19 cents, being approximately 10 per cent above the base rate, or 17½ cents I heretofore mentioned.

Q. When, if at all, did that rate go into effect?

A. I said 19 cents. That should be 20 cents,—19 cents line haul rate and one cent transfer.

Q. And what was the effective date shown by the correction sheets, Exhibit 1316?

9429 A. I believe all dates were correct, with the exception of January 5, 1937, rate. It is shown as January 16.

Q. Now, does that cover the whole exhibit 1315-A and -B?

Q. You have gone through and have completed your testimony regarding 1315-A and -B?

A. Yes, sir.

Q. Referring to Exhibit 1316, on page 72 thereof, being the correction sheet to the North Carolina freight rate book, correction sheet No. 72, I note one change there reading "change effective at once Icanna, Wilmington, 13.5." To what extent can and do rates become effective at once?

A. Under the Interstate Commerce Act carriers and

their agents are compelled to give 30 days notice of a change in rate, unless they have prior to filing said rate secured permission from the Interstate Commerce Commission for a lesser period. The Commission is authorized by Section 6 of the Interstate Commerce Act to grant authority to file rates on any number of days not less than one,—notice.

Q. In what number of cases are such rate changes
9430 effective at once made?

A. There has never been a change made effective at once under Section 6. It is not permitted.

Q. What Section 6 is that you are referring to?

A. Section 6 of the Interstate Commerce Commission, title 49 of the Revised Statutes.

A. (Continuing) This Exhibit 1316, page 72, shows a change occurred effective at once in a sheet issued February 15, 1938, from Wilmington, North Carolina, to Icanna, North Carolina.

Perhaps I have a tariff with me that shows the date of that change, if the Examiner will pardon me for a moment.

Trial Examiner Norwood: Yes, go ahead.

(Witness refers to document.)

A. (Continuing) I do not know the exact date on which that change was made, but if it affected a rate available in Interstate commerce it could not have been made effective at once, but must have been made effective on some given date.

9431 Q. Would you say that applies to any other cases where the correction sheets show changes effective at once?

A. All rates filed with the Interstate Commerce Commission must be effective at least one day after filing, and only less than 30 days when permission of the Commission has been secured prior to filing.

Q. Have you known of any cases where the Commission gave special permission for the rate becoming effective on cement in less than 30 days?

A. I could not answer—yes, the rate from Ironton to Boone previously mentioned by me in my testimony was made effective on 10 days' notice in supplement filed to Roy Pope's I.C.C. 105, Commission's Exhibit 1314.

Q. Do you know of any cases—well, I guess your testimony covers that.

You know of no cases, I take it, where the rates on cement were to become effective at once?

A. The tariff would not be accepted by the Interstate Commerce Commission, I don't believe. I have never known of any such tariffs to be accepted.

Q. If the shipper does not specify the route, are there cases where the railroads are not bound to give the shipper the lowest rate in effect?

Mr. Leisure: I object to that. It is much too general. I don't see how the witness can speculate
9432 on that. Are there cases in which the railroads can do that.

Trial Examiner Norwood: If it is on the basis of knowledge and experience.

A. Perhaps I can answer that best by citing a decision of the Commission.

In 214 I.C.C.—I can't quote the page number—a screen door company, whose name I have forgotten, claimed a rate lower than that available under the tariffs of the carrier to whom they tendered the shipment. The I.C.C. held in that case that the only duty of the carrier was to transport the shipment over the lowest route available via that carrier as the initial carrier and that the shipper was responsible for the selection of his own initial carrier.

By Mr. Wooden:

Q. Are there cases, then, where if the shipper did not specify the routing that he would not get the lowest rate necessarily?

Mr. Leisure: I object again unless the cases are brought before us. We are only trying this one case.

Trial Examiner Norwood: The objection is overruled.

A. I might cite Commission's Exhibit 1313, which is a
Pacific Freight Tariff Bureau, 88-P, rates from Col-
9433 ton, California, to Topock or Kingman, Arizona, are
30½ cents if tendered the Atchison, Topeka & Santa Fe Railway, or the Pacific Electric Railway. No specific rate is published in this tariff by the Union Pacific Railroad, and I was unable to find a rate that low in any other publication.

Trial Examiner Norwood: Does that answer the question?

Mr. Wooden: I don't see that it does fully.

Mr. Leisure: It seems to me "are there cases" when and what part of the country and—

Trial Examiner Norwood: This witness is giving you exact information.

Mr. Leisure: But I am objecting to the question.

Trial Examiner Norwood: He is referring you to these cases.

A. (Continuing) If a carrier receives a shipment from a shipper it must transport that shipment over that route or one of those routes, if there are several, over which the lowest rate applies via that carrier as an initial carrier. That is the extent of its obligation.

Of course, that routing is modified by any instructions shown by the shipper on the bill of lading, such as delivery, junction point, or other routing instructions.

9434 By Mr. Wooden:

Q. Let me ask you this question, to supplement the other: If the shipper does not specify the routing are there cases where he would not get the lowest rate?

Mr. Smith: You mean over that particular railroad?

Mr. Wooden: No.

Trial Examiner Norwood: I think the question is: Is he bound to select his initial carrier when he delivers the goods for shipment. Having selected that carrier, then the carrier must give him the lowest routing.

Mr. Wooden: Depending upon whether there is another line involved.

By Mr. Wooden:

Q. Is that correct, Mr. Simpson, whether one of the lines is party to the rate or not?

A. He would have to transport it over the lowest, the cheapest route composed of parties to the tariff who offered themselves out as being willing to transport that shipment for that rate.

Q. Would there be some lines involved that wouldn't be parties to that tariff?

A. Could easily be. If they were not parties to the tariff they couldn't be parties to the rate.

9435 It is necessary a carrier participate in a tariff before it can be a party to a rate and if the tariff carries routing instructions, as many do, and I will refer to Commission's Exhibit 1314 which, on page 181 to 198, inclusive, contains numerous routing instructions stating which routes the rate will or will not apply, depending on the terminology of the paragraph.

The mere fact that the Atlantic Coast Line is a party to Mr. Pope's I. C. C. 105, does not mean that they are a party to every rate by every route available under such tariff because they specifically state they will not join in the protection of a through rate where they are the delivering line and also the initial line unless they get the entire haul. They will not join as a connecting carrier in such a rate.

9436 Q. Or would you say that if a shipper wants the lowest rate, that he should be careful to specify the rate?

A. If he wants the lowest rate, he should be careful to select that carrier, or one of those carriers, which offers the lowest rate in his tariff. It is not necessary that he specify the routing, providing he selects the proper initial carrier.

Q. Unless he specifies the carrier, as you mention, he would not get the lowest rate?

Mr. Leisure: He has answered that question.

Trial Examiner Norwood: He has answered that very clearly.

The Witness: May I amplify that statement, or correct that statement?

A. It is necessary, however, that if he does spec-
9437 ify the routings, that he specify only that routing which is available under the terms of the rate he seeks.

By Mr. Wooden:

Q. Do the rate books show that information, the North Carolina rate books?

A. Referring to Commission's Exhibit 994, I find on page 9 a rate of 11 cents from Wilmington to Abattoir. That rate book does not show that the Seaboard Airline cannot transport that shipment as an initial carrier, although the Seaboard Airline serves Wilmington.

Q. Then, in order to be assured of the lowest rate, would you say the shipper would need something in addition to the rate book, such as Exhibit 994?

A. The only possible way that the carrier can get the advantage of the lowest rate.

Q. The carrier—you mean the shipper?

A. The shipper, I should say.

Trial Examiner Norwood: Yes.

A. (Continuing) Is to check the terms of the tariffs of each of the carriers serving the point from which the shipment is made, and having facilities for handling that shipment either by themselves or through connections to destination.

By Mr. Wooden:

Q. Now, Mr. Simpson, having examined the rate
9438 book, Commission's Exhibit 994, and the correction sheet, Commission's Exhibit 1316, is it?

A. The correction sheet is 1316; yes, sir.

Q. To what extent can the shipper dispense with a staff of traffic men or traffic department by relying upon those books?

9440 Q. I mean by that Exhibit 994 and Exhibit 1316.

9441 A. It is probable that the use of this rate book, and any others that may exist—although, frankly, I have not seen any others—might save a certain amount of time in a traffic department. I feel confident, however, that it is impossible for any traffic department—for any auditor of any company to determine whether or not the freight charges on any shipment actually made were the lowest available to that company over any route. That information could not be obtained from this publication.

In order to obtain the lowest charges available to the shipper on the specific shipment made, it is necessary for the traffic department to determine, through the medium of an experienced tariff man, the carload minimum necessary to lower that freight, to order the cars of the proper length and capacity, to accommodate that minimum, to select as the initial carrier—that carrier or one of those carriers offering the lowest rate, or, if speed is the essence, the quickest route, to show the delivering, as delivering carrier, that carrier which can most adequately serve the delivery, and to show any intermediate carriers that may be necessary for any reason, such as possible diversion.

After having selected—after having loaded the car and selected the shipper, the shipping road, the originating road, it is necessary that the freight bill be audited to see that there is no overcharge, all of which requires the
9442 use of freight tariffs and the assistance of men competent to handle them.

This is not such a publication.

Q. What book do you mean?

A. 994.

Q. Does the size of the shipper and the number of shipments affect your answer just given?

A. I would say that any shipper who had any substantial volume of traffic would save enough money through the use of a traffic manager to pay this service, and I base that statement on the fact that the mapority of large shippers, of all industries—and I am not restricting myself to the cement industry particularly—do have a traffic department.

Q. Do you see anything in the book, 994, which would permit the small shipper of cement to dispense entirely with his traffic tariff man, or traffic department, whatever he may have for traffic purposes?

A. It is the custom of certain small industries to secure the use of some cooperative auditing service, of which a number are in the country, that gives them a partial check on their freight charges. They also refer routing problems to those agencies. What the cement industry in particular does I am unable to state, but certainly this book is of no use for either purpose.

Q. That is 994?

9443 A. 994; yes, sir.

I might qualify my answers given in the last—to the last few questions by the statement that, assuming the rate set to be correct, and I have not found enough errors in it to condemn it as incorrect, this may be a lead to the fact that there is in force in some tariff over some route and subject to some minimum weights, and subject to certain other conditions, a rate of 11 cents from Wilmington to New Bern, North Carolina, and other rates from other points to other points.

Trial Examiner Norwood: That would put him on inquiry, you think?

The Witness: Yes, sir.

By Mr. Wooden:

Q. Do I understand, Mr. Simpson, that you have not made any attempt to check that entire book of correction sheets to see whether the information is correct?

A. This book 994 was first placed in my possession this morning. I have not had occasion to check it.

Trial Examiner Norwood: Well, in your checking, have you found that the rates in that book are the lowest rates?

The Witness: So far, I have found only one error, and that was only for a 12-day period, and that was in the 1316 correction sheets to this book.

9444 By Mr. Wooden:

Q. But you have—

Trial Examiner Norwood: Then, when they have a rate there, there is some rate of some carriers that corresponds to it?

The Witness: They had a rate of 19½ cents for a 12-day period. It should have been 17½.

By Mr. Wooden:

Q. But you have made no check completely of the book?

A. No, sir.

Q. For errors?

A. No, sir. I have had no opportunity.

Mr. Wooden: Will you give this the next number, A, B, and C.

(The documents referred to were marked for identification Commission's Exhibits 1317-A, 1317-B, and 1317-C.)

By Mr. Wooden:

Q. I show you, Mr. Simpson, papers marked for identification Commission's Exhibits 1317-A, B, and C. Will you state what they are?

A. This is a photostatic copy of three certain papers which I personally prepared, containing reproductions of the freight rates.

1317-A contains a statement of freight rates on
9445 Portland cement in carloads in force on May 1, 1938, from El Paso, Texas., to Douglas, Ariz., and numerous other stations in Arizona, and to Lordsburg, N. M.

Exhibit No. 1317-B contains a history of rates from Kingsport, Tenn., to Boone, N. C., specifically, showing the rates in force from January 1, 1937, to the present date.

1317-C shows a statement of freight rates on Portland cement in packages in carloads from points in California to points in Arizona and Nevada, in force on May 1, 1938, from Oro Grande, Victorville, Calif., Monolith, Calif., Cowell, Calif., Davenport, Calif., Kentucky House, Calif., Merced, Calif., Colton, Calif., and Crestmore, Calif., to various stations in Nevada and Arizona.

Q. How did you happen to make up those—were they special compilations made up?

A. They were made up at the request of Mr. White of the Federal Trade Commission in answer to the request for rates specifically from these points of origin to these points of destination, on the rates mentioned.

Q. And this is a compilation whose accuracy you will vouch for?

A. This is the compilation of the rates shown in the tariffs and I have personally checked the rates against the sheet both before and after the typewriting.

Mr. Wooden: I offer that in evidence.

9449 (COM. EX. 1317-A, 1317-B, and 1317-C was offered and received in evidence.)

9450 *Cross Examination by Mr. Leisure.*

Q. Mr. Simpson, a few moments ago I think you stated that in that book you found only one error?

A. I made only a test of one rate.

The Witness: I was only asked to check one rate.

By Mr. Leisure:

Q. And that was the one that was incorrect?

A. Yes.

Q. You said that that rate was incorrect in the

9451 book which you found?

A. Yes.

Q. Was incorrect only for a period of 12 days?

A. Yes.

Q. And in consideration of that, did you consider correct No. 32 under Exhibit 1316?

A. I answered my questions specifically from a sheet that showed the January 16 rate. I stated I didn't know what else was in the book. I had had no opportunity to examine the book whatsoever.

Q. Would you be good enough, then, Mr. Simpson, to look at 32 now and see whether you want to change your testimony on that point?

A. (Witness refers to book.)

Q. Read the first paragraph there under "Changes in effect" and effective dates.

A. Correction No. 32 makes the correction to which I alluded.

Q. And just read the first paragraph and state if you still want to say it was incorrect for a period of 12 days.

A. I say it made the correction to which I alluded.

Q. Oh, I see. Then, there was no error?

A. There was no error in that one rate.

9452 Q. So, then, since you have now looked at the sheet that I direct your attention to, you can tell the Examiner that you found no errors in the book; is that correct?

A. I made a check of one rate. I found that rate to be correct.

Q. Now, this morning you gave us several examples to show that there may be different freight rate bsetween two points because of different routings; do you remember?

A. Yes, sir.

9455 Q. I see. But you do know in the shipment of freight that the Interstate Commerce Commission, in certain instances, does allow the railroads to equalize the rates, do you not?

A. Only after—they may publish the same rates as the competing carriers.

Q. That is what I mean.

A. And frequently do.

Q. That is what I mean.

9456 A. But the mere fact that one carrier publishes a rate doesn't mean that that rate will apply over the rails of another carrier, unless the other carrier has also published the same rate.

Q. I have no quarrel with that.

Trial Examiner Norwood: Well, between these larger terminals, in the matter of freight—

The Witness: Yes.

Trial Examiner Norwood: Do they usually carry the same rate for the same commodity?

The Witness: In many cases, no. Perhaps I can give you an example between Washington and Norfolk, there is one carrier route, the Pennsylvania Railroad, which serves both Washington and Norfolk. There is a two-carrier route composed of the C. & O. and the R. F. & P. The two-carrier route is much shorter than the one-carrier route, and for that reason the rate is lower by C. & O. and R. F. & P. than by the Pennsylvania direct. Perhaps that is caused by section divisions,—if the Pennsylvania tried to meet the rate of the other lines, that would be encountered.

By Mr. Leisure:

Q. But where they are different, as you have just described to the Examiner, the shipper could select the lowest rate?

A. If he knew the line over which it applied.

9457 Q. Yes.

A. He would have to know that.

Q. If he had sufficient tariffs he could ascertain that?

A. If he knew how to read them.

Q. Yes. That requires an expert, really, to know how to handle those documents, does it not?

A. That is a fact; yes, sir.

9461 Q. But it is still carload lots, if you are referring to minimum carload lots, isn't it?

A. But the rate only applies if you ship or pay for the amount equal to the carload minimum.

9462 Mr. Zimmerman: Will you excuse me if I interject something there? I am not clear on what you said about the minimum that might be used by the shipper.

The Witness: The tariff requires 50,000 pounds. The shipper can ship any quantity he wants to, but he has got to pay for the minimum shown in the tariff.

9463 Q. Now, a moment ago when you were talking about the rate that was to become effective at once—

A. Yes, sir.

Q. —as you read it from one of these correction sheets, —you remember?

A. Yes, sir.

Q. You said it was impossible for a rate to become effective immediately. You had reference, of course, to the law governing the railroad rates between the carriers and the I. C. C., had you not?

A. Yes, sir.

Q. You did not have reference to any shipper issuing instructions that if a carrier had already established the rate they might issue a statement saying that a rate was effective at once if it had already gone into effect?

A. Perhaps I can explain the answer this way: A rate must be made effective on a given date,—we will say October 25, 1938. That rate must be filed with the Interstate Commerce Commission on some day previous to October 25, and normally must be at least 30 days previous to that day.

If the Cement Institute Freight Rate Bureau of Beth-

lehem, Pennsylvania, discovered on October 27, 1938, a change which had been made October 25, 1938, they might advise their clients that such a change occurred on
9464 October 25; but if they said it occurred at once, that would mean that the correction sheet was incorrect for shipping purposes by reason of being delivered too late and incorrect for auditing purposes by reason that it was dated too late.

Q. Well, the shipper might want to have that information at once; he might want to use it.

A. They could publish on October 27, with perfect propriety, a statement that on October 25 the rate was reduced to, we will say 10 cents, from 11 cents; but to say that the change occurred at once, is not a true statement of the tariff, unless that sheet were made on the same day that the rate actually was reduced, or changed.

Q. Yes. Then it would be correct, would it not?

A. Then it would be correct, if made the same day, although not the usual railroad terminology.

9469 By Mr. Zimmerman:

Q. Don't you know that much about freight rates?

A. I know this much about freight rates that nobody can check a freight rate quickly and easily, and, furthermore, that anybody who is a receiver can check a rate if he takes time or employs a traffic manager, if he is small or large.

Q. But he would have to do one or the other, wouldn't he?

A. Yes, sir.

Q. He would have to know a good deal about a very complicated set of tariffs, wouldn't he?

A. Yes, sir.

Q. Could a fellow learn all about that in a week, maybe?

A. I have been working on it 20 years and I am just beginning to learn.

Q. The ordinary small dealer would scarcely be in a position to anywhere near equal your knowledge, would he?

A. It would be impossible for any dealer who had
9470 not made a study of freight tariffs to check it himself. The usual practice is, most small industries in most lines, and I presume the cement industry or building trade industry is like the other lines, is to employ a part-time man who serves a number of industries in the same

city in the capacity of secretary of a chamber of commerce; something of that kind.

Q. In other words, if you were a small manufacturer or small dealer, in either event, you would find it almost economically essential for the best interests of your business to employ a freight rate expert to keep you advised?

A. Yes, sir.

9473 Q. Well, it would not make any difference who paid the freight, to begin with. When the cement is laid down on the job the cost of it would have to include the cost of transportation, would it not?

A. Yes, sir.

Q. And if that happened to be transported by rail, that would mean that it would have to include whatever the railroad companies charged for transporting?

9474 A. If the settlement was by the receiver of the goods, not included in the invoice price, yes.

Q. He would have to pay it in any event, wouldn't he?

A. Well, if the quotation were f. o. b. point of destination, it would not make any difference to him what the rate would be.

Q. Yes. But my question is this, Mr. Witness: That cement would cost whatever the cost laid down on the job and transporting it from the shipping point to the receiving point?

A. Certainly.

Q. Now, before you, as a contractor, could assemble your figures to make your bid, you would have to know what your cement would cost laid down on your job, wouldn't you?

A. Yes, sir.

9490 Q. Have there been, commonly, such freight rate bureaus or agencies that furnish information like that to any shipper that will pay a small fee for it?

A. There are a number of them.

Q. Quite a number of them?

A. I wouldn't say how many, but I know there are a number of them.

9500 Washington, D. C.,
October 26, 1938.

9501 JOHN P. SIMPSON resumed the stand and testified further as follows:

9509 *Cross-Examination (Continued) by Mr. Zimmerman.*

Q. Well, now, with reference to the auditing, what is the purpose of that? What is accomplished by it?

A. The freight tariffs, such as these you have in
9510 front of me, are difficult to construe. There may be as many as a thousand rates between any one point, and the selection of the proper rate is a matter for an expert, and even the expert may make a mistake.

The railroad employees are required, because of the exigencies of their service, to work at some speed. They occasionally make mistakes. They occasionally, innocently, and with no intention to defraud anybody, will make an overcharge.

I had no attention—I have been a railroad employee myself; I have made mistakes; I had no intention to defraud. I presume others are just as honest.

These claim adjustors recheck the bills to see if they can ascertain a lower rate in any other tariff, or in the tariff from which the railroad may compute the rate. They occasionally do. These adjustments may be had by either filing a claim directly with the railroad for a stated overcharge, or filing a complaint with the Interstate Commerce Commission for an adjustment, requiring the consent of the Commission.

Q. Now, where a concern has numerous shipments by rail freight, such as we have seen, like the Government—

A. Yes.

Q. —that auditing service and the freight claims amount to a very large enterprise; does it not?

9511 A. Well, now, you mention the Government. The Government has a force of 200 auditors, roughly, round figures, 200 auditors in the General Accounting Office, and over 100 in the War Department, and a number in certain other places I could mention.

Q. Now, almost every large corporation that has a
9512 good deal of shipping to do has also a freight claim department that does that same kind of work?

A. Well, the freight claim departments are usually, or in certain cases, I won't say usually, but every case that comes to my attention—have been attached either to the office of the traffic manager, or a part of the cooperative transportation service which the man employs. Now, these cooperative transportation services are of two general types, usually, many chambers of commerce have a traffic department with a traffic manager, either on a salary or fee basis. I don't know—

Q. Contingent basis, sometimes?

A. Yes.

Q. Where he shares in whatever he recovers?

A. Probably, I wouldn't like to say from my personal knowledge. And in other cases a man, perhaps a practitioner for the Interstate Commerce Commission, will maintain an office for the audit of freight bills, usually on a contingent fee, I understand.

Q. Now, that is the sort of service that is essential to the economical operation of any business that does not buy all of its goods at a destination price, isn't it?

A. That is essential to the economical operation of all business that pays freight charges.

9513 *Redirect Examination by Mr. Wooden.*

Q. Mr. Simpson—

A. Yes, sir.

Q. —do I understand from your testimony on cross-examination that the buyers, whether retailers or contractors or what not, can ascertain from their local railroad agent, through him, what the freight is from any point to destination?

A. Yes. He can't give you the information right off the reel, so to speak, but he can secure the information from his general office, and is required under the Interstate Commerce Commission to furnish that information.

Q. Does he furnish it in writing?

A. He furnishes it in writing, if asked to.

Q. Is that required?

A. I believe it is. I have to refresh my memory to answer that question.

Q. Required by what?

A. The Interstate Commerce Act.

Q. When you refer to the Act, you mean the Transportation Act of 1920?

9519 Q. Now, how far back does your experience in rates go, Mr. Simpson?

A. The summer of 1918.

Q. Would you say, so far as you know, that during the whole period the buyer was able to get information from his local freight agent—

A. Oh, yes.

9521 Mr. Wooden: Strike the answer; let me finish the question.

By Mr. Wooden:

Q. Information from his local freight agent, giving the cost of freight delivery laid down at his station from any particular shipping point.

A. The Interstate Commerce Act requires that local agents of the carriers furnish to the shippers on request the cost of transportation of any present or prospective shipment.

Mr. Hershberger: He means the buyer; he says the shipper—"furnish the shipper."

The Witness: Any buyer or shipper, I should say.

By Mr. Wooden:

Q. And, Mr. Simpson, could the buyer include in that information that he asked for from his local agent, matters of routing?

A. He could.

Q. Could he get the information as to minimum car rates?

9522 A. He could.

Q. Well—

A. I might state that the usual procedure is for the freight solicitor of the carrier to either be contacted by the man procuring the transportation, or seek the man who is procuring the transportation, and find definitely from what point the freight will be shipped to what point the freight will be shipped, and under what conditions.

Q. How about the switching charges? Could he ascertain that from his local freight agent?

A. Oh, yes. There is on file in the local freight office, as a matter of fact, in the larger offices where the switching is of considerable importance, the switching—the local freight agents are well versed in their switching procedure.

Q. Now, you made some reference to Government purchases and the number of auditors required for that purpose.

A. Yes, sir.

9527 Q. Mr. Simpson—

A. Yes.

Q. —you testified yesterday in response to a question by Mr. Zimmerman, on page 9482 of the record, that if the freight charges are included in the bid price: "I would say it was absolutely immaterial to the buyer whether the manufacturer paid 10 cents a hundred or $10 a hundred."

In making that answer did you have any knowledge of whether the manufacturers in the cement industry paid the freight to the railroad or not, or whether the buyer paid it?

A. I understood from Mr. Zimmerman that the freight charges were either paid by the manufacturer or deducted from it,—from the invoice.

9528 Q. In answering the question, was your only information that conveyed by the question, itself, Mr. Simpson?

A. Yes, sir.

9529 "Q. Also it appeared that the shipper in the ce-
9530 ment industry figured the delivered price on the invoice and deducted from the face of the invoice the amount of the actual freight from shipping point to destination, and then the buyer remitted to the manufacturer only that residue and paid the freight himself to the railroad company. Would your answer be any different than it was before?")

A. If the buyer received from a mill a bid of $1,000 for a given quantity of cement laid down in Abattoir, N. C., and the purchaser had the right to deduct from that invoice price of $1,000 every cent he paid the transportation company, I do not see that it would be of any concern to the purchaser, the amount of those transportation charges.

9531 Q. Now, Mr. Simpson, referring to Exhibit No. 1316—

A. Yes, sir.

Q. —and to correction sheet No. 59 to the North Carolina freight rates, book No. 3, which is Exhibit No. 994, what would you say as to whether there there was an

erroneous rate in effect during any period of time on the basis of that correction sheet?

9532 Mr. Leisure: Now, Your Honor, I don't know how this witness can just take a correction sheet and just give his opinion as to whether there is some error in that sheet without some basis being laid for it.

Trial Examiner Norwood: He is a rate expert. He knows the rate, doesn't he?

A. Effective November 15, 1937, virtually all carriers, including the carriers transporting cement in the South, increased certain rates, including the rates on cement by amount permitted by the Interstate Commerce Commission in its order in case Ex Parte 115; I have forgotten the date of the order. The tariff which names rates on cement from southern producing points to points in the South was subject to that increase on November 15, 1937.

On November 16, 1937, one day after the increase became effective—or I presume that is the date; this sheet carries that date as the issued date—on a sheet which bears an issue date November 16, 1937, the Cement Institute of Bethlehem, Pa., advised its members that effective November 15, that increase took effect. If the letter took 24 hours by mail, I would say that for two business days, or one business day, depending on whether a Sunday intervened or not,—I do not recall,—the industry was figuring prices on an incorrect basis.

9539 The Witness: Strike out that portion following after "a Sunday intervening" and substitute that business was incorrectly advised as to the transportation charges.

Mr. Smith: If it relied on that book?

The Witness: If it relied on that book.

Mr. Leisure: That is correct.

Mr. Smith: There is no proof, of course, that it relied on that book.

The Witness: No, I don't know that they do.

Trial Examiner Norwood: I don't think there is testimony that he relied on that book. Mr. Niland, and the others, told us about that. I have just gone over it in the record.

9544 By Mr. Wooden:

Q. My question is whether or not in Exhibit 1316, correction sheet No. 61, it would appear from that paper

that there was a period of time during which the industry was not being advised of the actual rates in effect?

A. In answering that question, I will ask that I be permitted to answer in full before I am interrupted. I don't know.

Mr. Zimmerman: We never had a chance to interrupt him.

A. (Resumed) The sheet purports to be issued on November 29, 1937, and to cancel correction notice No. 59, which is also on file in this—before this Commission—and the sheet No. 59, your Commission Exhibit No. 1316,—and the sheet No. 59 of 1316 had been previously described by me as having been issued or purporting to have been issued on November 16, 1937, and shows an increase effective November 15, presumably 1937, of 1 cent a hundred pounds on all rates in North Carolina freight book.

9545 I did not bring out at the time, not knowing that this question would be asked, that there was an exception to that. This exception reads: "This increase does not apply to intrastate rates, that is rates on shipments having origin, destination, and entire transportation within the State of North Carolina."

On November 29, 1937, the increase was reproduced in this language: "Increase by 1 cent a hundred pounds on all rates in North Carolina freight book No. 3 be amended. This is effective November 15, and cancelled the previous increase."

Now, that eliminated the exception. The effect of this was presumably—and I speak with knowledge of the practices of the carriers—to increase both the intrastate and interstate rates contained in the rate book. Now, whether or not the North Carolina Commission authorized that increase on November 15—on November 29—or at all, I do not know.

Q. But so far as interstate rates are concerned, was that effective November 15th?

A. That was—that had beben previously made in correction sheet No. 59 on November 15th.

Q. I beg your pardon?

A. That had previously been made on correction sheet No. 59 on November 15, and was simply a reproduction on 61.

Q. Assuming there are no cement-shipping mills

9546 in the State of North Carolina, what would you say?

A. I don't see that it would make any difference.

The Witness: Mr. Smith in the lobby called my attention to a possible misstatement.

I ask the Reporter to read my answer in which I used the expression "North Carolina Commission."

The question and the answer, please.

(The record was read as follows:

"Q. My question is whether or not in Exhibit 1316, correction sheet No. 61, it would appear from that paper that there was a period of time during which the industry was not being advised of the actual rates in effect?

"A. In answering that question, I will ask that I be permitted to answer in full before I am interrupted. I don't know.

"Mr. Zimmerman: We never had a chance to interrupt him."

"A. (Resumed) The sheet purports to be issued on November 29, 1937, and to cancel correction noted
9547 No. 59, which is also on file in this—before this Commission—and the sheet No. 59, your Commission's Exhibit No. 1316,—and the sheet No. 59 of 1316 had been previously described by me as having been issued or purporting to have been issued on November 16, 1937, and shows an increase effective November 15, presumably 1937, of 1 cent a hundred pounds on all rates in North Carolina freight book.

"I did not bring out at the time, not knowing that this question would be asked, that there was an excepton to that. This exception reads: 'This increase does not apply to intrastate rates, that is rates on shipments having origin, destination, and entire transportation within the State of North Carolina.'

"On November 29, 1937, the increase was reproduced in this language: 'Increase by 1 cent a hundred pounds on all rates in North Carolina freight book No. 3 be amended. This is effective November 15, and canceled the previous increase.'

"Now, that eliminated the exception. The effect of this was presumably—and I speak with knowledge of the practices of the carriers—to increase both the intrastate and interstate rates contained in the rate book. Now,
9548 whether or not the North Carolina Commission authorized that increase on November 15—on November 29—or at all, I do not know."

The Witness: Your Honor, I would like to add a little to that explanation.

Trial Examiner Norwood: Go ahead.

The Witness: Mr. Smith, I am adding to the explanation of the section which you referred to.

The increase authorized by the Interstate Commerce Commission had effect only to authorize the carriers to increase their rates of interstate commerce. By that I mean commerce between two States or passing through another State in transit. Each of the 46 States had to act independently if the carriers would secure similar authority in that State. Many of them did. Whether North Carolina in particular, or any other State in particular, did authorize that increase I am unable to state.

9549 The Witness: There are two statements I made yesterday which, after refreshing my memory, I want to correct.

Trial Examiner Norwood: Go ahead.

The Witness: I made a statement on the record—I do not know what page—that the minimum weight from Pennsylvania producing area was 40,000 pounds. On referring to the tariffs on file with the Interstate Commerce Commission—and I will furnish a statement to that effect—I find that in many cases, if not all, the minimum weight is 50,000 pounds in a 36-foot car.

9550 Another statement I made which I desire to correct was that the emergency charges found on page 3 of Commission's Exhibit 994 were incorrect. I was basing my statement on the fact—on the terms of an order in Ex Parte 115 of the Interstate Commerce Commission issued at a later date. The order on which this increase had been computed has been correctly carried out, and these emergency charges are apparently correct.

Mr. Leisure: You are referring to your testimony on page 9383 (showing)?

The Witness: Yes, sir.

Mr. Leisure: All right.

By Mr. Wooden:

Q. Mr. Simpson, I want to make sure there is no misunderstanding about your last testimony, as to whether or not there were incorrect rates in effect during a period of time as indicated by correction sheet No. 61, Exhibit

1316, if you apply it to interstate rates, or apply it to interstate rates alone?

9551 The Witness: The Cement Institute freight rate books is a rate schedule prepared by the industry, I presume, and purporting to reproduce rates published in the tariffs on file with the State regulatory bodies.

Mr. Zimmerman: You presume.

The Witness: I presume, and I have no reason to believe that they are generally incorrect. Every rate, as I explained, which is filed with the Interstate Commerce Commission, and, so far as I know, every rate which is filed with a State regulatory body must bear the date which that rate is effective. By "being effective" I mean the date that rate goes into force and cancels the rate previously in force, if there were one.

Mr. Zimmerman: Referring to tariffs.

The Witness: Yes, referring to tariffs.

Now, apparently it is the purpose of the Cement Institute to follow the same practice, to have a date show an effective date. In certain instances, as I pointed out in my testimony yesterday, they use the term "effec-

9552 tive at once." That I do not understand. But referring specifically to page 61—

By Mr. Wooden:

Q. Sheet No. 61.

A. —sheet No. 61 of Exhibit 1316, that bears this notation: "Cancel correction notice 59 issued November 16 and substitute therefor the following." It is therefore necessary to revert back to correction notice 59 to see what change was first made.

On November 16, 1937, or issued November 16, 1937, appeared correction notice 59 to North Carolina freight rate book No. 3. I presume the Institute told the truth when they said it was issued on November 16. They said effective November 15 the rates on interstate traffic were increased 1 cent, and that no increase was made on intrastate traffic. The effect of that would be that a rate from Wilmington on a through shipment from Pennsylvania would be increased 1 cent, because that would be interstate movement. A shipment from Wilmington of cement manufactured at Wilmington would not be increased 1 cent. Whether there is a cement manufacturer at Wilmington or not I do not know.

On November 29, 1937, the Cement Institute advised the users of this book—

Mr. Zimmerman: On that date they advised them?

The Witness: Well, that is the date shown on the 9553 sheet.

Mr. Zimmerman: And you think there was no error, and that it was mailed out on that date?

The Witness: Yes, sir.

They advised the users of the book that effective November 15 all rates were increased 1 cent in the book of the rates in North Carolina, freight rate book No. 3, and as amended, with the exception of changes in correction notice 60. Now, that increase of 1 cent had no effect on interstate commerce, because it had been previously announced in correction sheet 59.

9554 JOHN A. GLESSNER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

At the present time I am occupied as chief of the freight rate branch, section of tariffs, Bureau of Traffic, In-
9555 terstate Commerce Commission. I have held such position since June 15, 1929. Prior to that time I served the Interstate Commerce Commission in the section of tariffs both as tariff examiner and rate clerk from March 30, 1908, until June 1929. Before coming into the Interstate Commerce Commission I was employed by a carrier. I served as local freight agent for the Pennsylvania Railroad from the latter part of 1899 until sometime in March 1908.

Q. Have you heard the testimony given here yesterday and today by Mr. Simpson, of the Interstate Commerce Commission?

A. I did.

Q. Did you hear his testimony with regard to the need for routing information from the standpoint of shippers?

A. I did.

9557 Q. Mr. Glessner, based on your experience as you have described it, is it important for shippers to have

the knowledge as to routing as well as rates in figuring the cost of transportation?

9558 A. I would consider it very essential for this reason: That a rate, when published, applies over a given route as designated in the tariff, and for that reason it is very essential that the shipper should know his rate, otherwise his traffic might be misrouted.

By Mr. Wooden:

Q. His "rate" or "route"? You said it was necessary to know his "rate", did you say, or "route"?

Mr. Wooden: Would you read that portion of the answer?

The Reporter: (Reading:) "—that the shipper should know his rate."

By Mr. Wooden:

Q. Do you mean "rate" or "route"?

A. He should know his rate and route.

Mr. Zimmerman: May I ask, for the purpose of the record, whether or not this is merely cumulative evidence of the same things that were testified to by the previous witness, Mr. Simpson. Is that the purpose of it?

Mr. Wooden: I would say yes.

Trial Examiner Norwood: You would have to ask Counsel.

Mr. Zimmerman: I am asking him.

9559 Mr. Wooden: "Yes" is the answer.

By Mr. Wooden:

Q. Do you have any other reasons to give why the routing is essential, as you put it, to the shipper?

A. If you don't know your route and you head a shipment toward, say, a common point, that is a point served by more than one carrier, and you would require a station track delivery, you will get that delivery under the rate by the road haul carrier that would take your shipment into destination. It might be clear across town from the particular delivery that the shipper might want. On station delivery, of course, he couldn't get that because the carriers don't open up their terminals with respect to competing carriers. But with respect to industrial traffic it might be. It might be in that case that the road haul carrier would absorb the connecting carrier's switching charges.

Q. In your judgment, based on your experience, how

important is it to shippers to have information as to the minimum car weights in knowing what their cost of transportation was?

9560 A. The shipper should know the minimum weight that he would have—or the weight rate that he would have to furnish before he would get the advantage of the particular rate governed by that minimum; otherwise he would have to pay for weight that he does not actually ship.

Trial Examiner Norwood: Is that true of any one who figures the weights, regardless of whether he is a shipper or not?

The Witness: I would say yes; anybody should know that.

By Mr. Wooden:

Q. How much range might there be between having that information and not having it. In other words, what difference in the amount of the calculation for the rate may that factor make?

A. I don't just understand your question.

Q. You say it is important that the shipper know the minimum weights?

A. Yes.

9561 Because there is a difference in rate between a car carrying so many pounds and another car carrying a different weight, is that right?

A. That is true in some cases, but I don't think it applies generally—that is, you have in mind a graduated scale.

For illustration you start off with a low minimum for a short car and if you use longer cars, why, the minimum weight is graduated higher, depending on the length of the car used.

Q. I will try to put it this way: How much difference in the rate per hundredweight may result from a shipment on a car of the minimum weight and one loaded to capacity?

Mr. Leisure: What commodity? Minimums are different in different commodities.

Trial Examiner Norwood: If he has a case, he can mention the commodities in different percentages.

Mr. Wooden: I want the particular question and then we will specify, if we can.

The Witness: Will you read the question?

(Question read.)

Mr. Leisure: Minimum weight of what commodity?

Trial Examiner Norwood: Can you illustrate those differences and name the commodities considered, answering this previous question from that standpoint?

9562 A. We have quite a number of rules; when a car is fully loaded it may get the advantage of the carload rate, and I am not prepared to say in this particular instance with respect to cement, if we have that rule or not, but I do know we have rules to that effect, that if the car is fully loaded it has the advantage of the carload rate. In so far as the difference in the rates would be concerned, there would be none, in that case.

9566 *Redirect Examination by Mr. Wooden.*

Q. Mr. Glessner, if an incorrect rate is quoted by the railroad, in writing—

A. Yes.

Q. —is that done at the railroad's peril? Does it have to make good on that incorrect rate if it quotes it in writing?

A. Oh, yes, it has to make good with the Government. The shipper doesn't profit by an error of that sort.

9567 A. Well, it does not concern the shipper at all. He doesn't share in the profit and he doesn't stand for any loss, or he doesn't stand for either profit or loss in a case of that kind.

Q. The burden is on the railroad?

A. The burden is on the railroad to charge the —

Q. The legal—

A. The legal filed and published rate.

Q. And if it quotes a different rate in writing, it must make good, nevertheless?

A. It must make good, according to the filed and published legal tariff.

9580 *Cross-Examination by Mr. Zimmerman.*

Q. Have you discovered anything in the Interstate Commerce Act that makes it obligatory upon the carrier to tell anybody who is interested in the payment of freight rates what the lowest applicable rate is, whenever they are asked?

A. When application is made to a particular carrier, the assumption is that they will give them the lowest rate.

9581 Q. Oh, no. I am asking you if you discovered anything in the Interstate Commerce Act that compels the carrier as a matter of duty to give information concerning the lowest applicable rate.

A. I do not know that I can cite you to an answer specifically in that respect, but the lowest rate is always the proper rate, the legal rate.

Q. You mean, then, that, according to your understanding, if the carrier does not give the lowest applicable rate, but gives any other rate which is applicable according to the published tariffs—

A. Over the particular route in question, yes.

Q. Wait a minute, now. If he has failed to give the lowest applicable rate, but instead has given some other rate, which is applicable according to the tariffs, that he has violated the law?

A. We have a principle. Now, if I am getting you right on this, if you are talking about the same originating carrier on the same date over the same route, and you have conflicting rates in your tariff—

Q. No, I am not talking about that at all. There may be any number of routes, and one, however, is the one which affords the lowest applicable rate.

A. It is the carrier's business, of course, to quote the lowest applicable rate to which they are a party.

9582 Q. To which they are a party?

A. Sure.

Q. But they are not all parties—

A. The carrier is not going to quote the rate of its competitor.

JOHN P. SIMPSON was thereupon recalled as a witness for the Commission and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Simpson, referring to Exhibit 1316, have you made any study to ascertain whether or not there was any period of time during which the rates shown in the exhibit

or in the North Carolina rate book, 994, to Boone, North Carolina, were incorrect?

A. Since the last recess I was asked by Mr. White,
9583 of the Federal Trade Commission, to recheck the rate from Ironton to Boone to discover if that rate were at all times properly reproduced in the rate book from the published tariffs.

I found two periods in which there was a discrepancy, one of only one day, the other of six months.

Q. Will you give us the details of that six month period?

A. Page 3 of Exhibit 994 contains the following provision: "Emergency charges: Except as otherwise indicated, all rates are subject to the following emergency charges authorized by the Interstate Commerce Commission in ex parte 115 until June 30, 1936, unless sooner cancelled or extended, rates 14.3 cents per hundred pounds and over, increase one cent per hundred pounds,"—and certain immaterial matter on the page.

It is my recollection,—and I have refreshed my recollection by referring to,—I think it is Exhibit 1317—

Trial Examiner Norwood: See what it is marked.

Mr. Wooden: (Hands document to the witness.)

The Witness: Exhibit 1315-A, in which it is shown that the emergency charge of one cent per hundred pounds expired on December 31, 1936.

I might explain that by reference to agent Roy Pope, I. C. C. No. 3, for which appropriate certificate will be furnished for the record.—

Mr. Zimmerman: Could I, Mr. Wooden, interrupt
9584 long enough to ask him to tell us who is this Roy Pope.

The Witness: I will.

—which originally carried an expiration date of June 30, 1936 in supplement No. 9. This expiration date is shown as with December 31, 1936.

Now, in answer to Mr. Zimmerman's question as to who is Roy Pope:

The carriers have two methods of publishing tariffs,—three methods of publishing tariffs. The initial carrier may publish a tariff; they may have a limited carrier publish a tariff for it; or it may join with one or more carriers in employing an agent.

The carriers had at that time designated a man by the

name of Roy Pope as their publishing agent, as agent in the Southern territory. The rate tariff which is on file, for which certificates will be furnished, and described as the southern cement tariff, that is I. C. C. 105 of Agent Miller, was then known as Agent Roy Pope, I. C. C. 105, and it is the same schedule.

Now, that makes reference to No. 3 for emergency charges, and it is in the I. C. C. 3 that we secure reference to the authority for the application of the emergency
9585 charge of one cent on rates in excess of 14.3 cents.

From the period December, 1935, until June 30, 1936, I have reason to believe that the cement book was correct in its reference to the emergency charge. It was, however, incorrect in showing no emergency charge in force during the period from July 1, 1936, through and including December 31, 1936.

9586 By Mr. Wooden:

Q. You have checked Exhibit 1316 to see if there was any supplement?

A. I made a check of Exhibit 1316. Find that the pages bearing issue date, correction sheet No. 32, was issued January 5, 1937. Every correction number is used in the book prior to 32. In other words, the sheet number, correction Nos. 1, 2, 3, and so on, up to and including 32. None of these sheets make reference to the extension of the expiration of the emergency charges.

Q. Mr. Simpson, what was the amount of those emergency charges?

A. One cent per hundred pounds on rates in excess of 14.3 cents per hundred pounds, and for amounts of less than 14.3 cents per hundred pounds, 7 per cent of the freight charges. I am speaking of the charges on cement, now.

Q. Is it your testimony that during that six months' period the actual rate to Boone, N. C., was 1 cent per hundred pounds in excess of that shown by the 1316 and 994 exhibits?

A. The actual rates as shown in the tariffs which I have examined is 1 cent per 100 pounds in excess of the rate in the North Carolina rate book as amended by sheets 1 to 32, inclusive, of the Exhibit 1316.

Q. Did Mr. White show you any other corrections in the book?

A. No, sir.

Q. Nor in any of the other books?

A. We made no check other than the Ironton to Boone rate.

Q. Mr. White did not check any other rate with you, then?

A. No, sir.

Q. Now, in considering that, your conclusion, Mr. Simpson, have you also considered, and will you turn now to the correction sheet No. 30, issued December 21, 1936? It is Commission's Exhibit 1316.

A. I had overlooked that at the time I first spoke. However, I called attention—

Q. Did Mr. White call your attention to that correction No. 30?

A. No, sir. I call attention to the fact that this is shown as effective January 1, 1937, whereas we were looking for a change that would postpone a cancellation effective July 1, 1936.

Futhermore, this notice was not issued to the users of the book, according to the statement on the first sheet, until December 21, 1936.

Q. But what does it say? Will you just read it in 9588 the record?

A. "Issued December 21, 1936. Important change effective January 1, 1937. The Interstate Commerce Commission on December 19, 1936, denied the petition of the railroads for permission to continue existing emergency freight charges after December 31, 1936. Hence, on and after January 1, 1937, no rates will be subject to any emergency charges. Please be governed accordingly and cancel table of emergency charges on page 3 of this book."

Q. I again ask you, had you considered this correction sheet at the time you testified a few moments ago?

A. I had not, but I wish to recall that I read into the record the fact that the rate book carried an expiration date of June 30, 1936, unless sooner canceled or extended.

Q. Right.

A. And that there was no cancellation or no extension —or that the users of the book were informed of no cancellation or no extension until December 21, 1936.

That is, none to which my attention has been called.

Trial Examiner Norwood: But does that change your statements about the—

The Witness: That changes my statement on and after December 21, 1936, when users of the book were informed of the error, and made as of June 30th.

9589 By Mr. Wooden:

Q. Now, that—

Mr. Leisure: Just a moment.

Trial Examiner Norwood: That shortens the period in which there was an incorrect quotation?

The Witness: It shortens the period 9 days—10 days.

By Mr. Leisure:

Q. Now, will you refer to that correction sheet again, No. 30.

A. Yes.

Q. And it says "to cancel," does it not?

A. Yes.

Q. Now, if it were not in effect—can you explain why it would be suggested in that correction sheet when it should be canceled?

A. My answer would be that it evidently is an error on the part of the compiler. The emergency charges on their own terms expired on June 30, 1936, and there was no occasion for canceling dead matter.

Q. Here it is,—it says it is canceled.

A. Well, I can't help that.

Q. So it was not extended.

A. It was not my mistake.

Q. It says it is canceled, not extended. Can you
9590 see any reason for suggesting that it should be canceled?

A. No, sir.

Q. Does it not suggest the inference to you that it was canceled, if it says so?

A. If it was extended—I have seen no notice to that effect.

Q. And that is what your testimony comes to?

A. Yes.

By Mr. Wooden:

Q. Have you examined Exhibit 1316?

A. I have examined 1316. I will admit I had overlooked sheet 30. Perhaps Counsel can refer me to some other sheet in making the change. I didn't see any.

By Mr. Leisure:

Q. Have you considered whether or not these books are issued with the understanding that the statements in the books are correct until canceled?

A. I presume that they intended that statement to expire with June 30th, to mean that the rates would expire with June 30th, as they said.

Q. What is the practice of the railroads in that connection?

A. The railroads when they say the rate expires on June 30th, on July 1st do not use that rate but use some other rate.

9591 Q. And they do not send out a new rate until July 1st?

A. No, sir; they use the rate that was in force prior to the cancellation. Now, then—

Q. And as far as your own knowledge goes, you cannot say whether or not that was done in this instance, can you?

A. Absolutely, I have no knowledge.

Redirect Examination by Mr. Wooden

Q. Is your testimony, Mr. Simpson, that there was an incorrect rate in effect for a period of 6 months less 10 days?

A. So far as the user of the tariff goes, that is 9592 my testimony.

Recross Examination by Mr. Leisure.

Q. You, of course, do not know whether or not this rate was in use, do you, Mr. Simpson?

A. Oh, no.

Q. Of your own personal knowledge?

A. Oh, no.

Mr. Leisure: That is all.

The Witness: I have no knowledge whatsoever of the use of this book.

Mr. Leisure: That is all.

Trial Examiner Norwood: Call your next witness.

(Witness excused.)

Mr. Paulson: Mr. Hayghe, please.

WILLIAM E. HAYGHE was thereupon called as a witness for the Commission, and, having first been duly sworn, testified as follows:

Direct Examination by Mr. Paulson.

9593 I am William E. Hayghe, Chief of Traffic Section, Procurement Division, Treasury Department. My duties are to direct the routing of carload shipments for account of all Government establishments, with the exception of military, responsible for the quotation of rate books used in the awarding of contracts, Government contracts, and, to a limited extent, in the payment of carrier's transportation bills, and other related duties. It is part of my duty to procure shipment of goods; and it is also part of my duty, to a limited extent, to audit shipments received, as to freight. We do not perform a complete audit of the transportation bills, simply an administrative audit. I have been engaged in that type of work
9594 since 1928. I would say that I had handled many thousands of cases involving rates, several thousand, quite a few thousand.

Q. (Indicating) I am showing you, Mr. Hayghe, Commission's Exhibit 1110-W, and ask you to look at it and apprise yourself of what it is, preparatory to answering questions regarding it.

A. (Witness looks at paper:) Yes, sir.

Q. What does it purport to be, Mr. Hayghe?

A. It appears to be a memorandum of freight rates applying from certain points of origin specified on page 1, to destinations in the State of Ohio.

Q. And prepared by whom?

A. And prepared by the Cement Institute, 111 West Washington Street, Chicago.

Q. What does it purport to give?

A. Rates on cement between points of origin named on page 1 to destinations in the State of Ohio.

Q. Based on your experience with traffic matters, would that book, standing alone, give you sufficient information for billing shipments so as to secure the lowest rates?

A. No, sir; it would not.

Q. What information is lacking?

A. Among other things, there is—the informa-
9595 tion lacking includes certain rules and regulations to which all rates are subject, and which are, as a matter of fact, as much a part of the rate as the rate—as the amount of money itself, the minimum carload weights, no routing instructions or reference to any publications containing routing instructions, no specific reference to tariffs from which these rates probably were obtained.

Those are the principal factors, I think, that are missing.

Q. What about information as to which stations are prepaid stations?

A. I didn't catch that.

Q. What about information as to which stations are prepaid stations and which are not? Is that contained—

A. No, I see no reference to that, either.

Q. Is that necessary information to a shipper?

A. May I ask a question there?

Q. Yes.

A. You say what stations are prepaid stations. You mean to what destinations charges must be prepaid?

Q. Yes, sir; is that—

A. That is important so far as the person actually making the shipment is concerned, though I don't believe that that would be of great importance.

Trial Examiner Norwood: It would not make any
9596 change in the rates, would it?

The Witness: I beg your pardon?

Trial Examiner Norwood: I say, it would not make any change in the rates, would it?

The Witness: No, sir; it would make no change in the rates whatever.

By Mr. Paulson:

Q. From a billing standpoint, is it important that you know whether or not you have to prepay?

A. It is rather important, but even if you did not, of course, the railroad agent would not accept the shipment to a prepaid point,—that is, ordinarily, what we consider ordinarily a non-agency station,—without prepaying freight charges.

Q. Lack of information on that score, it would simply mean going through a little needless clerical work in the matter of writing out a bill and having to tear it up again; is that so?

A. That is about all it would amount to, in my opinion.

Q. You said that the book, Exhibit 1110-W, does not give you routing information; why is it necessary to have routing information?

A. There are many reasons why shipments should be routed. In the first place, a given rate will not always apply by all available routes between given points
9597 of origin and destination. There is a more general reason for routing, to obtain proper distribution of traffic to all carriers. That, of course, is incidental to the work of the traffic manager, but it is a very important reason for routing. But the principal reason is the first one I stated, that the lowest rate is not necessarily available via the routes of all carriers serving a given point of origin and destination.

Q. Do you, in your official position, make a practice of routing all shipments?

A. All Government shipments are routed.

Q. Do you do that in the interest of securing the lowest cost for freight?

A. Primarily, but with the Government the second reason that I stated is of more importance than to the commercial shipper, for the reason that business that we ship and route is not our own property, is not the property of the department concerned. It is public property and every railroad as well as every individual has an equity in making it essential that every available transportation company receive an equitable proportion of Government traffic moving.

Q. But the element of cost enters into it?

A. That is the primary reason.

Q. Where do you obtain information as to routes?

A. In the tariffs naming the rates in routing guides specifically referred to in the rate tariff.

9598 Q. When you are getting route information, can you obtain rate information without extra effort?

A. No. Each motion is a factor in itself.

Q. Altogether separate?

A. Well, it is performed during the same process, but the routes are not named in the same place in the tariff as the rates. You must refer to one part of a given tariff for the rate and a separate part of the tariff, or even a different tariff, for the routing. Frequently you will find no route published in a particular rate tariff, but that

tariff will have references to other tariffs naming the route via which the rates apply.

There are some few exceptions to that general observation. There are some tariffs which specifically provide that the rates named herein will apply via the routes of all carriers parties to the tariff, but such instances are the exception rather than the rule. Instances of that sort are particularly prevalent in the Southeast and other sections of the country. You won't find it to any great extent.

Q. Which information is more difficult to obtain, that of rates or of routes?

A. I don't know. I don't believe there is much difference between the two. If there is any difference I would say that the determination of the rate is a shade more difficult than the determination of the route.

9599 Q. Doesn't the determination of the route more or less determine the rate, in the final analysis?

9600 The Witness: Unless you have specified the particular route via which your lowest rate applies, or unless you select as the origin carrier that line which is a party as origin line to the lowest rate available, then, unless you have specified the proper route, it will have a decided effect upon the rate, yes.

By Mr. Paulson:

Q. That does not exactly answer the question.

Let me ask this further question: Can you know the lowest rate without knowledge of routes? Can you answer that?

A. Yes, I think you could know the lowest rate without knowing the route. You could by checking all tariffs applying from a given point of origin.

Trial Examiner Norwood: But could you use it in shipments?

The Witness: Could you—

Trial Examiner Norwood: Could you take advantage of it by making the shipment known,—taking advantage of knowing the route?

9601 The Witness: You would have to use the route.

Trial Examiner Norwood: Yes.

The Witness: Provided in connection with that lowest rate; in order to insure the application of that lowest rate.

By Mr. Paulson:

Q. More or less interwoven?

A. Absolutely.

Q. Referring to the book again, Mr. Hayghe, Exhibit 1110-W, would that book minimize the amount of traffic work which the shipper without it would have to perform?

A. To perform a complete traffic job?

9602 Do you want the question read?

The Witness: No.

In my opinion it would not minimize the work with which I am associated.

By Mr. Paulson:

Q. Does the book serve any practical purpose to a shipper from a practical standpoint?

A. In my opinion the only purpose that it might serve would be to indicate that there is,—assuming that the information in here is relied upon,—that there is in 9603 effect between the points specified a given rate. Aside from that I would place no real value on it.

By Mr. Paulson:

Q. Is it true that in some places rail rates are compelled by water rates? I am not sure of the terminology. Is there such a term?

A. What is the question?

(Question read.)

A. I do not know just what the intent of that word "compelled."

Trial Examiner Norwood: Well, make that "lowering" of rates. Are rail rates lower by reason of water rates?

The Witness: Rail rates are lowered—

Trial Examiner Norwood: Are rail rates sometimes compelled to be lowered by water rates?

The Witness: No. I think it is to the contrary. I think water rates are frequently lowered by reason of certain rail rates in effect.

We have what we call—well, I will change that. It is a recognized principle that water lines are entitled to possibly the right to quote lower rates than rail lines between certain points because of certain operating peculiarities. They can handle it cheaper than the railroads.

9604 Trial Examiner Norwood: Well, you are speaking there of lowering by the Interstate Commerce Commission, aren't you?

The Witness: No, sir.

Trial Examiner Norwood: And not the lowering of the rate by the water line by reason of a lower railroad rate?

The Witness: They are permitted by the Commission to quote lower rates in many cases than the rail carriers between the same points.

By Mr. Paulson:

Q. Is there such a thing as a daily or weekly fluctuation in rail rates along seaboards, for instance, due to competition by water routes?

A. No. I would not go so far as to say that there is a daily or a weekly fluctuation. There may be, and no doubt is, a fluctuation due to changing competitive conditions, but not as frequently as daily or weekly.

Q. Is it feasible, in your opinion, for a railroad to publish a summation of rates which is intended to aid in shipping?

A. The railroads seldom ever do. Certain water carriers issue what we term memorandum tariffs or memorandums of rates.

I don't know, personally, of any rail tariffs of 9605 that type.

As a matter of fact, it couldn't be called a tariff, but a memorandum of rates.

There is published, by a firm by the name of Hartman, what is presumed to be a consolidated tariff of rates throughout the country, but it is not used commonly or to any great extent, so far as I know.

In any event, government officials have never availed themselves of this tariff. It is commonly known as Hartman's Tariff.

Q. Is that because it is impossible to place all the necessary information, keep it up to date, in such a book?

A. No, principally because you could prove nothing by it. You couldn't quote it as an authority for a given rate between given points. It is simply an information publication, purely and simply. It has no legal status and could not be quoted as an authority for any rate between the points mentioned therein.

Q. It is generally understood that traffic problems are great; rates are involved and the matter of ascertaining a rate and a route is a difficult one. Is it feasible, in your opinion, to attempt to solve that problem or obviate it by such a compilation as that?

A. In my opinion it would be impracticable.

Mr. Paulson: Will you read my last question again?
9606 (Last question read:)

By Mr. Paulson:

Q. In Exhibit 1110-W, Mr. Hayghe, is one of the pieces of information lacking in that book, that respecting minimum cars?

A. Minimum costs?

Q. Minimum cars, minimum weights?

A. I think that is one of the things I have specified is missing. If I didn't, there is nothing in here to show what minimum carload rates these weights are subject to.

Q. Is it necessary that a shipper have that information?

A. Very essential.

Q. Why?

A. To determine the total cost.

Cross-Examinaton by Mr. Leisure.

Q. Mr. Hayghe, on the question just preceding this one Mr. Paulson pointed out the difficulties of traffic problems, and then asked you whether or not such a book as that would be of any assistance to a shipper. Did you ever attempt to use such a book as that as a shipper? Did you ever make any use of the book as a shipper?

A. No, sir.

Q. Did you ever serve in the capacity of a
9607 shipper, at any time?

A. No, sir.

Q. Now you mentioned several things, Mr. Hayghe, that are missing from the book, and I am speaking now of the Ohio book, 1110-W.

A. Yes, sir.

Q. That is the one you have been referring to.

A. Yes, sir.

Q. I think you said there were certain rules and regulations that were omitted from the book?

A. I said that practically all rates are subject to certain rules and regulations which, when published in connection with the rate, become just as much a part of the rate as the amount of money itself.

Q. Have you looked through those books for any notations or notes, at the bottom, to see wherever a rate is changed by a rule or regulation there is a note on that, or not?

A. I see very few notes indicating that there are, that they are subject to any particular rule or regulation.

I see a reference mark, for instance, on page 136 against rates named to Violet, Ohio, which indicates that there is an additional charge of some sort for some reason of $88.10 per car. That is the principal notation that I have noticed in here.

Q. Did you notice any asterisks along the sta-
9608 tion names there on the left hand column?

A. Yes, sir. There are quite a few referenced with an asterisk.

Q. Look on the first page, too, will you please?

A. Yes, sir.

Q. That refers to certain statements on the first page, does it not?

A. That is true. That freight charges so indicated must be prepaid in accordance with tariffs on file at the Interstate Commerce Commission and the Public Utilities Commission of Ohio.

Q. So in reply to Mr. Paulson's question about prepaid stations the book does show that?

A. It does have the reference showing those particular stations are prohibited.

Q. If some of these rules and regulations you have mentioned, Mr. Hayghe, should change the rate itself, then those statements would be incorrect in the book, if it is printed without the rules and regulations? Wouldn't that follow?

A. The statement in the book would be incorrect, did you say?

Q. The prices that are given in the book; the rates.
9609 A. If there were rules and regulations.

Q. If there were rules and regulations that changed them.

A. Published in the tariffs lawfully on file with the Commission, it would have the effect.

Q. It changed that rate.

A. Yes.

Q. Has Mr. White or Mr. Wooden or any assistants pointed out to you in that book any place any errors of that kind?

A. No, sir; they have not.

Q. So, as of the present time when you sit in the stand

and testify, you have not had any errors pointed out to you of that kind?

A. I have not; no, sir.

Q. You mentioned you would need to know the tariffs from which these rates were obtained, Mr. Hayghe. If that rate should quote the lowest possible rate, and you, as a shipper, were interested in knowing the lowest possible rate, of what benefit would it be to you to know from what particular tariff this came from if you had determined on the routing yourself?

A. So that I might assure myself via what carrier or group of carriers this lowest rate—

Q. I said, if you had determined the routing yourself. If you had determined the routing, itself, of what benefit would it be to know from what tariff it came?

9610 A. If I had determined the route myself by reference to the published tariff.

Q. If you are shipping every day from a certain place and you know the routings, suppose you determined the routing you wanted to use, would it or would it not be of any benefit to you to know from what tariff this statement was taken, this rate was taken?

A. There might be some instances where it might be beneficial. I might have, through setting of certain tariffs, determined that there was a certain rate in effect between points A and B via a given route of carriers. Should the fact come to my notice, either through a publication of this sort or from some other source, that indicated there was in effect between those same two points a rate which was lower than the one I checked, it would give me a hint to look still further in other tariffs in order to discover via what routes the lower rate was in effect.

Q. In other words, that would assist you in checking up in the book in finding out whether that was correct in attempting to state the lowest rate?

A. In those cases where the rate and route were higher than I have testified to, it would be to some assistance to that extent.

Q. And that was what you had in mind when
9611 you said one of the things that was missing was you did not have the tariffs from which they were taken?

A. I believe I said I did not have reference to the tariff from which this information was taken.

Q. And that was what you had in mind when you said that?

A. That is true.

Q. If there is only one railroad between the shipping point and the destination, then, of course, it would follow that there was only one route by which you could select?

A. Only one route by rail.

Q. I am talking purely of rail shipment.

A. Yes. There could only be—well, now, pardon me, please.

You might have a point of origin in one corner of a given State and a point of origin in another corner of a given State.

Q. That would be another case.

A. I mean both of them local on the same railroad but that particular railroad line might be so unduly circuitous between the two points it would be much to the advantage to use a joint line route.

However, I have in mind some particular cases and that is why I brought that out.

A, Yes.

Q. But ordinarily isn't it true in the case that I gave that the shipper, in many cases at least, the shipper

9612 wouldn't have any choice of routes?

A. That is very true. As a general rule, that would be true.

Q. In reply to Mr. Paulson's question, I think you said it was a part of your duties to route all the shipments?

A. Shipments consisting of two carloads. No more than shipments consisting of two carloads, I believe I specified.

Q. Just so that I understand. How do you determine upon the routing? What is your procedure?

A. To a large extent—

Q. One that you were not familiar with before,—you have got the problem new for the first time and now you are going to determine what route you choose.

A. I either call—either call for the particular tariff covering the movement in mind from my tariff files, or have that work performed by qualified rate men.

Q. I see. And from those, after that is submitted to you, then you determine which is the lowest route—and which is the lowest rate to use?

A. That is determined by the rate men, themselves.

prior to coming to me. They are expected to show where there are more than one route available, and number of routes from which selection—I make selections in order to equalize the distribution of traffic between all carriers.

Q. Approximately how many rate men have you 9613 in your section, would you say?

A. We have approximately fifty rate men.

Q. And the lowest rate that is shown would be the one that you would give, or that you would select?

A. That would be—we would be compelled to use the lowest rate.

Redirect Examination by Mr. Paulson.

9615 Q. In response to one of Mr. Leisure's questions, 9616 Mr. Hayghe, you referred to the book to see what it had to say—by "book" I mean Exhibit 1110-W—to see what it had to say about prepaid stations, and you found some sort of mark indicating that the book did give such information about prepaid stations.

Will you turn again to that mark in the book?

A. I will—

Q. The book says something about prepaid stations.

A. Yes.

Q. Can you find the reference to it?

A. Yes, sir.

Q. I think it is—

A. I have it.

Q. Will you read that reference.

A. (Reading) "Reference—and asterisks—indicate freight charges must be prepaid in accordance with tariffs later on file with the Interstate Commerce Commission and the Public Utilities Commission of Ohio, certain destinations bearing this reference as served by more than one railroad, and it is necessary to ascertain from tariffs whether all railroads serving such destinations require prepayment of freight."

Q. Thank you.

A. That is the complete quotation.

9621 WILBURN S. JONES, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am a special assistant assigned to the chief of the traffic section (Procurement Division, Treasury Department) under Mr. Hayghe and have occupied that position since January 1, 1935. Prior to that time I was employed
9622 with the Sloss-Sheffield Steel & Iron Company in the capacity of assistant traffic manager in charge of rates and tariffs. I was in that capacity for approximately 7 years. My duties while there were to handle with the rail carriers rate adjustments and transportation administration in the broad term, that is handling shipments and rates and supervising personnel.

Q. Showing you Exhibit No. 1110-W, being the Cement Institute's Ohio rate book No. 3, will you examine that book and state, based on your experience as assistant traffic manager for a private shipper, as well as on the basis of your experience under Mr. Hayghe, to what extent that book in that form would be of use and value to you as a shipper?

9623 It appears to be a statement of rates on cement in unknown quantities, applying when shipped as freight from named points to named destinations, apparently in Ohio, stated in cents per hundred pounds.

By Mr. Wooden:

Q. Now, my question, however, was, having examined the book, of what use or value would such a book have been to you as a private shipper and assistant traffic manager?

A. My reaction to the value of the book would be that it provided somewhat of a guide as to what rate of
9624 freight would apply between points. I wouldn't know whether it applied by truck, or by bus, or by railroad, or by barge lines.

A. Taking the book as it stands, that would be my reaction to it, that it would be virtually nothing more than a guide.

By Mr. Wooden:

Q. Does the book contain any information with reference to routing?

A. I don't find any.

Q. In the lack of such information, how does that affect its usefulness to a shipper, or a traffic manager for a shipper?

A. In view of the fact that rates of freight between points do not apply the same over all routes, it seems that it would be valueless in that respect.

9625 Q. Without value, you say?

A. Yes, sir.

Q. Do you find any information in the book as to the minimum car weights?

A. I have seen none.

Q. How does it affect its value for shipping purposes?

A. That would render the information as contained therein, that is the figures of rates in cents per hundred pounds, virtually of no value, because you wouldn't know what proportion it applied on, whether it was 100 pounds, or 500 pounds, or 10,000 pounds.

Q. I see.

I am showing you Commission's Exhibit 1000 and 1110-AA, being, respectively, the Virginia and Tennessee rate books (indicating). Will you examine them and see if you would make any modification of your previous answers as to those two books?

A. They seem to be—this one does—very much the same as the other one.

Q. Speaking of—

A. As the Ohio.

Q. Exhibit No. 1000?

A. Yes, 1000.

Mr. Leisure: Is that 1000 and 1010-AA?

Mr. Wooden: 1000 and 1110—

The Witness: 1000 and 1110-AA.

9626 A. I do note one difference and that is that the Virginia book and Tennessee book, or the Exhibit 1000 and 1110-AA, do provide that the rates on cement are in carloads per 100 pounds, unless otherwise stated, which seem to indicate that these rates applied in connection with rail shipments.

Q. Is that true of all three of the books?

A. No, the Ohio book merely says rates on cement in cents per 100 pounds unless otherwise stated. That does not state by carloads, barge, or what not. Aside from that, they seem to be very similar.

Q And would your answers given with reference to 1110-W apply to Exhibit 1000 and 1110-AA?

A. Yes.

Cross-Examination by Mr. Leisure.

Q. Mr. Jones, had you ever seen, before Mr. Wooden showed them to you, this 1000 and 1110-AA, these Virginia and Tennessee books; had you ever seen them before?

A. No, sir.

Q. Mr. Jones, when Mr. Wooden showed you the first book, 1110-W, and asked you to examine it, between the time of his question and your answer there elapsed exactly three minutes. Do you feel that you can take a book of that kind and give an answer such as you have
9627 given, as to whether or not the book is of any value or not?

A. Generally speaking, yes, sir.

Q. You were a little bit better on the other two books; it took you exactly four minutes to examine them.

Do you feel you can examine 1000 and 1110-AA, being the books for Virginia and Tennessee, and give an answer whether they are of any value or not?

A. I wouldn't say "examine them." I would hardly have time to examine them in the general meaning of that term, but in the light of my experience as a transportation man and with what those books purport to be, I think I could sum up their value in that length of time.

Q. In that length of time.

And, in your opinion, now, what do they purport to be, Mr. Jones?

A. I stated that as an answer to Counsel's question.

Q. Yes. You wouldn't mind answering it again, would you?

A. They purport to be a statement of freight rates on cement in cents per 100 pounds applying between defined stations or certain defined places, we will say. There is no indication that they are stations.

Q. If you were in the cement business and had been receiving these books over a period of a great many years, instead of looking at them for three minutes, you might know whether or not the book referred to freight
9628 rates rather than barge or truck rates, might you not?

A. If I had been receiving them over a long period of years I suspect I would.

Q. Yes.

Now, as to whether or not this book, 1110-W, the Ohio freight rate book, gives you any indication of whether or not it is for rail rates, did you consider not only the cover, but did you consider the note on the second page?

A. I noticed the note, yes.

Q. It is implied it is for freight rates, is it not?

A. Yes, rail rates.

Q. Railroad rates?

A. Yes.

Mr. Leisure: That is all, Mr. Jones.

By Mr. Hershberger:

Q. Do you want us to understand your testimony to be that a cement shipper could find these books of no more value to it than you have testified, that you now say they would be valuable to you?

A. A great deal would depend on how much reliance I had placed in those books. As a shipper of cement with that book placed in front of me as it stands alone, it has no application in law.

Q. That is not what I am asking you about. I am asking you whether you want us to understand your
9629 testimony to be that a cement shipper could get no more value out of these books than you have testified, that you now on the stand say you can find in them?

A. It wouldn't be of any value to me.

Q. Do you want us to understand that a cement shipper could get no greater value than that from them?

A. If I were a cement shipper, no; that is correct.

Q. You have had no experience in shipping cement, have you?

A. Yes, sir.

Q. Did you work for a cement company?

A. No, sir, I was never employed by a cement company, but as assistant traffic manager of Sloss & Sheffield Steel & Iron Company.

Q. That was cement you sold?

A. No, purchased.

Q. Then you were not the shipper.

A. Not of the cement, no, sir.

Q. That is what I asked you. So you have never had

any actual experience working for a cement company or shipping cement, as a customary procedure.

A. That is correct.

9631 *Redirect Examination by Mr. Wooden.*

Q. Did you show any minimum weight, in cars?

A. Yes, the minimum weight was shown in all cases.

Q. You say you shipped cement while with the Sloss & Sheffield Company—

Mr. Hershberger: No, he said he bought it.

The Witness: That is correct. We purchased the cement.

By Mr. Wooden:

Q. I thought you bought it and re-shipped it to some of your own purchasers, is that correct?

A. Yes, that is correct.

Q. You became a shipper; actually bought it?

A. No, I can think of no case of that kind.

Recross Examination by Mr. Zimmerman.

9633 Q. Now, you had a good many different kinds of steel to handle, did you not, and to ship?

A. Only pigiron and cast iron pipe.

Q. Those two?

A. Yes, sir.

Q. Well, now, you as a matter of fact knew, without ever looking in the book, what the minimum carload regulations were on those commodities, did you not?

A. I had a pretty good knowledge of it.

9634 Q. Yes. Well, now, in the cement industry, if you take into consideration that a minimum carload is about 50,000 pounds, and everybody knows it as a matter of common knowledge, would you still consider it was of any importance to put that in the rate book?

A. My answer to that would be that you couldn't assume that it was a matter of common knowledge.

Q. Well, suppose it was—I am assuming it—would you still consider it necessary to put it in the book?

A. If it was a matter of common knowledge, it would be superfluous to put it in.

Q. Why?

A. Simply because it was a matter of common knowledge.

Q. Yes.

9639 EVERETT MacINTYRE was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination.

9645 Q. Now, did you have an interview with Mr. Crapo along in the spring of 1933?

A. I did have one with him on May 12, 1933.

Q. Will you state in substance what Mr. Crapo told you on that occasion?

Mr. Zimmerman: For the purpose of saving time, may it be understood and stipulated between Counsel for the Commission and Counsel for the Respondents that the objection made to the original question and the motion to strike out shall be applicable to all questions and to all answers of this witness concerning the subject-mat-

9646 ter, as covered in the first question?

Mr. Wooden: That is agreeable.

A. I recall that during the interview I had with Mr. Crapo on May 12, 1933, that we discussed,—that is, in his answers to my questions,—his increase of the Alpino base price, and during that interview he stated that while he had not increased it but 20 cents per barrel, he had been asked by a number of his competitors, including Mr. J. B. John of the Medusa Company, that they certainly wished he had increased it 40 cents per barrel, and that if from the number of telephone calls that he secured from his competitors serving the state of Michigan urging him to reconsider and increase the price 40 cents instead of 20 cents, that the American Telephone & Telegraph Company should be able to pay additional dividends.

Trial Examiner Norwood: What time was that?

The Witness: That was relating to the increase of the Alpino base price by the Huron Portland Cement Company of 20 cents per barrel on March 10, 1933.

Those statements were made to me by Mr. S. T. Crapo during my interview with him on March 12, 1933.

9647 Q. Was anything said by Mr. Crapo at that time with reference to any relationship between his company and the Aetna Cement Company, as to trucking?

A. Mr. Crapo stated that after his establishment of a base price of $1.25 per barrel at Saginaw and Bay City on March 10, 1933, that he and the Aetna Company had come to an understanding as to what prices would be charged on truck deliveries and what territory would be covered by truck deliveries made from the Huron Silos and storage plants in Saginaw and Bay City and from the plants of the Aetna Company in that locality.

9653 Washington, D. C.,
October 27, 1938.

9659 JOHN P. SIMPSON was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Simpson, do you recall your testimony yesterday to the effect that during a period of something over 5 months the rates carried in the North Carolina rate book and in the correction sheets were erroneous so far as Boone, N. C., was concerned?

9660 A. I do, sir.

Q. Have you made any subsequent tests to ascertain whether or not that applied to other stations in North Carolina?

A. I have, sir.

Q. What was the result of your check?

A. To review the entire matter in a few words, the rate book, the North Carolina rate book No. 3, and filed as Exhibit 994, contains the following phraseology: "Except as otherwise indicated, all rates are subject to the following emergency charges authorized by the Interstate Commerce Commission in Ex Parte 115 until June 30, 1936, unless sooner canceled or extended."

Under the phraseology of that rule, and the tables which followed it, you will find, on referring to page 9 of the North Carolina rate book, that the rate which is shown from Wilmington to Acne, N. C., is 7 cents. The

rate shown from Chattanooga in the adjoining column to the same destination is 23½ cents. That rate of 7 cents, it will be found on page 3 of the same exhibit, is in reality 7.49, or approximately 7½ cents. The rate of 23½ cents is in reality 24½ cents, by reason of the 1-cent maximum in the increase.

Mr. Leisure: When you say "in reality" do you mean according to the tariffs?

The Witness: According to the tariff, I should say, and I will ask the Reporter to correct my 9661 language.

The tariffs on file with the Interstate Commerce Commission, so far as I know—I made no check—but so far as I know would show the same rates.

On July 1, 1937, there was, so far as this book showed at that time—

By Mr. Wooden:

Q. The rate book No. 3?

A. Rate book No. 3, and as amended by 1316—no emergency charge in force; therefore, the rate shown as 7 cents was, so far as the user of the rate book, and the supplements, the corrections—the rate was really 7 cents from Wilmington to Acne and not 7.49. As of the same date, the rate from Chattanooga to Acne was 23½ and not 24½.

However in the order in Ex Parte 115 of the Interstate Commerce Commission, those emergency charges were extended. In fact, they were extended several times, and did not finally expire until December 31, 1936.

On December 21, 1936, or presumably on that day, there was issued correction No. 30 to North Carolina freight rate book No. 3, which bore the issue date I have recited, of December 21, 1936, and read—

9662 By Mr. Wooden:

Q. Are you referring to Exhibit 1316, now?

A. I am, sir; and read "The Interstate Commerce Commission on December 19, 1936, denied the petition of the railroads for permission to continue existing emergency freight charges after December 31, 1936. Hence on and after January 1, 1937, no rates will be subject to any emergency charges."

It is my opinion that, so far as information has been placed in my possession as to the releases of the Cement Institute Freight Rate Bureau, no advice was given to the

users of cement that the emergency charges were in force during the period from July 1, 1936, until December 21, 1936.

Q. Pardon me. Did you say users of cement or users of the—

A. Users of the rate book. It is true that on December 21, 1936, the users of the rate book were advised of the correction but that was five months and twenty-one days after the correction should have been issued.

Q. Now, Mr. Simpson, you have referred to another destination or two, I believe, in addition to Boone that you covered yesterday?

A. Yes, sir.

Q. To what extent, if you can answer, were the rates shown in the correction sheets and freight rate book No. 3 of the Institute, Exhibit 994, out of line elsewhere in the State of North Carolina?

9663 A. Every rate in the North Carolina rate book was, for the period of five months and twenty-one days, out of line.

Those rates which are in excess of 14 cents in the rate book as shown on pages 8 to 127, inclusive, are one cent lower than the rate as shown in the tariffs of the Interstate Commerce Commission, presuming that they are correctly reproduced.

Q. Are you referring, or are you intending to confine that to interstate lines?

A. My testimony is necessarily confined to interstate rates because I do not know of the action of the North Carolina State Commission.

Rates of less than 14½ cents are lower by 7 per cent of the rate shown than the rate actually in force.

Cross Examination by Mr. Leisure.

Q. Mr. Simpson, as I understand your testimony this morning, it amounts to this: That the Institute rate book for North Carolina on page 3—was it?

A. Yes, sir.

Q. —has a statement that the emergency charges would expire on, I think you said June 30?

A. Until June 30, 1936, is the phraseology.

9664 Q. Yes; unless extended.

And you found no notice about any such extension?

A. Prior to December 21, 1936?

Q. Yes. That is what your testimony amounts to this morning?

A. Yes.

Q. Now, at the request of Counsel for the Commission we have turned over some 35 of those books to him. Has the Counsel for the Commission, or Mr. White, pointed out any other errors?

A. I have never seen any other books than the North Carolina books.

Q. Those were the only ones pointed out to you?

A. Those were the only ones ever shown me.

9665 ALEXANDER G. BILLINGSLEY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Paulson.

I am special assistant to the Chief of the Traffic Section, Procurement Division, Treasury Department. The nature of my work is special assignments and general traffic administration. In a little more detail it involves calculations of freight rates, routing of shipments and related matters. I have had experience as the representative of a private shipper. For approximately 5 years I was with Southern Dairies in Washington in charge of transportation. My duties there were the general duties of a traffic department of a commercial concern, which consisted of adjustments of rates service, routing,
9666 auditing of transportation accounts. It was part of my duties to route shipments and tend to the procuring of transportation at the lowest rate.

9667 Q. When you are sending goods from your plant to a destination, you have a problem; what are the specific questions you must answer in order to move the shipment by the lowest route—at the lowest rate?

A. When you determine what the lowest rate is, what route, and under what conditions it applies, and use that route.

Q. In a little more detail, Mr. Billingsley, what is the course of your procedure as a traffic man in attempting to

get that shipment out, at the lowest rate? Give us the steps of the proceeding.

A. Well, you—you have a prospective shipment, you go to your tariffs on file with the Interstate Commerce Commission, or the State Commissions, and actually check the rate, and then determine from that tariff, or the tariffs that are referred to, on that, over what route it will apply, via what carriers it will apply, in order to determine how you can get that shipment to destination by the cheapest rate.

Q. Do you have to make any check of the size of the car?

A. Under certain conditions, yes.

Q. Do you have to write the bill-of-lading?

A. The bill-of-lading, in my experience, was written under my supervision; I did not actually write it.

9668 Q. (Indicating) I am showing you Commission's Exhibit 1110-W, and ask you to take the time to look it over so as to apprise yourself as to what it is.

A. (Witness examines Exhibit 1110-W.)

Q. What does it purport to be, Mr. Billingsley?

A. From the cover, it is the Ohio Rate Book No. 3, cancellation of Rate Book No. 2, rates on cement, and cents per hundred pounds unless otherwise stated, to destinations in Ohio, as provided for in the tariffs on file by the Interstate Commerce Commission, and the Public Utilities Commission of Ohio.

Q. Have you seen it before?

A. I have examined it briefly, before.

Q. Did you examine it sufficiently so that you know what it is?

A. I think so, in a general way.

Q. Can you see how that book could serve an actual need of a shipper?

Mr. Leisure: Now, I submit that whether this witness can see how it could or could not is not material in this case.

9669 Trial Examiner Norwood: If you confine it to the figuring of rates, computing rates, then he may answer the question.

Mr. Paulson: Well, I—does that mean, Your Honor, that he can answer the question?

Trial Examiner Norwood: Yes, if you confine the answer to the matter of computing freight rates.

A. I don't think it would be of any actual value in the actual direction of traffic, or in the audit of transportation accounts.

Q. Would it serve any actual need of the shipper, speaking only of his problem of shipping?

A. I don't think it would serve any purpose, sir; no, sir; applying to that.

Q. Would that book, standing alone, give you sufficient information for billing shipments so as to secure lowest rates?

9670 A. It would not.

Q. Is that one of the reasons you say that it would serve no actual need of the shipper?

A. That is correct.

Q. Can you name another reason why it would serve no actual need?

A. Let us see—may I have the question and answer read?

(Last question and answer read.)

(Questions and answers read as follows:

"Q. Would that book, standing alone, give you sufficient information for billing shipments so as to secure lowest rates?

"A. It would not.

"Q. Is that one of the reasons you say that it would serve no actual need of the shipper?

"A. That is correct.")

Trial Examiner Norwood: Then read the pending question.

(Question read as follows:

"Q. Can you name another reason why it would serve no actual need?")

By Mr. Paulson:

Q. Will you name the reasons why that book would serve no actual need?

A. Well, the book does not show any participating 9671 carriers; it doesn't show the conditions and rules that you would have to follow in order to secure these rates; it doesn't show any routes; it has no legal status; it shows no routes; it shows no minimum weights. You couldn't determine the freight charges from this.

Q. What do you have in mind when you say it has no legal status?

A. I mean you couldn't quote it as authority for a rate or authority for a protection of any rate in here.

Q. What occasion does the shipper have to quote from official rates?

A. Well, in case he is overcharged, and he files a claim with the carrier, he has to quote authority for the rate claimed.

Q. What is the authority that must be quoted?

A. It is the tariff on file with the Interstate Commerce Commission or the various State commissions, as the case may be.

Q. Is the obtaining of route information, and of rate information, a one-process proposition?

A. Generally speaking, yes.

Q. Does it add much to your work when you are attempting to secure routes, to also obtain the rate information?

A. Well, from my own experience I find it more satisfactory to determine the rate first, and then deter-
9672 mine the routes over which that particular rate will apply.

Q. Would that book minimize the amount of work which a shipper without it would have to perform?

A. I don't see that it would.

Q. What reasons do you have for that answer?

A. Well, the same reasons that I cited why it would not be of any value, that is, it has no status. You might get a rate out of here, and you still wouldn't know whether it was right or not until you consulted the tariffs on file with the Commission, and the various State commissions.

Q. Can you explain why route information is necessary?

A. Route information is necessary because even if you have a rate that you know applies between two points, it is necessary to determine what route over which that rate will apply before you can be sure that that rate will be protected on your shipment.

Q. Is that generally true or only in the case—

A. Well, it is generally true, some tariffs carry provisions to the effect that the rates therein will apply over all lines that are parties to the tariff; however, that is probably the exception rather than the rule, and the majority of the rules apply only on specific routes.

9714 Mr. Wooden: Your Honor, I have here a document marked Commission's Exhibit 1319, for identification, and consisting of a certified copy of a transcript of

testimony taken in a case before the Interstate Commerce Commission with regard to rates in the Pittsburgh territory and in the course of the testimony a description was given of the trucking conditions in and around that territory by various representatives and officials of certain respondent companies.

I have in mind particularly Mr. Meyer, of the Green Bay Company, I think he is the vice-president, or some official.

Mr. Guy, I think the traffic manager of the Universal Atlas Company, near Pittsburgh. Mr. Gubernator, traffic manager of the Lehigh Company, and a representative of a number of Lehigh Valley Companies, Mr. McCrary.

The transcript of their testimony before the Interstate Commerce Commission is incorporated in this
9715 Exhibit 1319, for identification.

In the course of their testimony they adopted by reference, and offered as an exhibit in the case, the transcript of their testimony and of the proceedings in a case before the Public Service Commission of Pennsylvania, and I have here the certified copy of that transcript before the Public Service Commission. It has been marked for identification "Commission's Exhibit 1320."

Now, certain testimony was given by some of those parties in the hearings before the Pennsylvania Commission. The portions of the transcript before the I.C.C. and the Public Service Commission of Pennsylvania, which we wish to offer in evidence, have been marked with red marks at the beginning and end of each particular portion that are relevant.

The portions which I offer of the Exhibits 1319 and 1320, for identification, are as follows: As to 1319, the marked portions on pages 82, 84, 85, 87, and 88, 90 to 92, 94 to 97, 97 to 100, 111 to 112, 112 to 115, 116, and 116 to 117.

The portions of the record before the Public Service Commission of Pennsylvania which are offered include the marked portions on pages 3 to 5, 9 to 10, 11 to 12, 12 to 15,
28 to 30, 39 to 40, 45 to 46, 69 to 70, 88 to 89, 107 to
9716 108, 110, 113 to 115, 225 to 226, 226 to 227, 228 to
229, 260 to 264, 272 to 273, 288 to 290, and the certification by the Official Reporter that appears at the end.

(Document handed to Mr. Leisure.)

Mr. Leisure: I would like to ask Counsel on what theory

these are being offered. I understand that is a record from another case?

Mr. Wooden: That is right.

Mr. Leisure: Are you offering them on the theory they are admissions—

Mr. Wooden: As admissions of representatives of Respondents bearing upon the trucking issue which is a part of the complaint.

Mr. Zimmerman: Do they involve the Respondent Institute, in any way? I mean, by reference?

Mr. Wooden: I don't think the Institute is referred to.

Mr. Zimmerman: Do they involve the Respondent, Marquette, in any way, by reference?

Mr. Wooden: I don't think Marquette is referred to.

Mr. Leisure: And they are all admissions, is that the theory?

Mr. Wooden: They are the testimony of representatives of certain Respondents indicated, and I place
9717 them, myself in the category of admissions; admissions, you might say, made under oath in the other case.

Trial Examiner Norwood: I shall defer ruling until Counsel can examine these documents.

9730 Mr. Leisure: We object to the exhibit now being offered, 1321, on the ground it is incompetent, irrelevant, and immaterial; specifically on the further ground that the author of the document is now deceased. There has been no showing that he was authorized to make statements on behalf of his own company or on behalf of any of the Respondents. The character of the statements involved that are marked in red show that they are the personal opinion of one man, which should not be binding upon the other Respondents, and for all of these reasons the exhibit should not be admitted in evidence.

9731 Mr. Leisure: I add my objection that it is far too remote. There is nothing, so far as showing that it would be in effect today, even if those opinions were popular at the time the book was written. There is nothing to show they were acted upon within the period of the complaint.

Mr. Zimmerman: I don't want to delay you, but I do want to read these things, so if you want to go on with something else—

Mr. Wooden: No, I would rather finish up with this, while we are at it; those portions there (indicating).

Mr. Zimmerman: Just what is marked in red?

Mr. Leisure: That is right.

(Counsel examines document.)

Mr. Zimmerman: I notice on page 19, Mr. Wooden, there is a red line that has been drawn around the whole of the paragraph, and then a little brighter red line drawn so as to exclude the last sentence.

Mr. Wooden: That is right.

Mr. Zimmerman: Do you intend to exclude or include the last sentence?

9732 Mr. Wooden: Exclude. In other words, there are so many self-serving statements in it, one might want to be careful—

Mr. Zimmerman: —to select only those that might be considered against—

Mr. Wooden: It is up to you to put the others in.

Mr. Zimmerman: Well, that is timely.

And I object to the introduction of this document not because of the contents of it but because there is no showing that it is relevant or material to any issue in the case, and because it is admittedly a document which was published long before the existence of the Cement Institute. There is no showing that it was ever brought home to the Respondent Marquette or that Marquette ever approved of it or had any knowledge of it or could in any wise be said to be bound by it.

It can't be an admission of any sort that would be binding upon anyone else than the company who issued it, and I doubt even then it could be considered an admission unless there is a showing that the facts are the same today as they were when that booklet, the date of which is not shown, was issued.

Trial Examiner Norwood: The utterance is prior to the formation of the Institute?

Mr. Wooden: That is correct, but it is an utter-
9733 ance by one of the Respondents in the case relating to the practice of the industry, which is the same now as it was then—

Mr. Zimmerman: That is a conclusion that Counsel makes, but it is not a matter of proof.

Mr. Wooden: It has been shown over and over again that the practice is the same.

Trial Examiner Norwood: Relating to the practice of the industry as it was then?

Mr. Wooden: Yes, but it is the same as now.

Trial Examiner Norwood: If the Counsel undertakes to show or contends that the record will show that these practices are the same—

Mr. Wooden: I contend that it has been shown over and over again by the record, but the important point to which I direct your attention concerns one of the issues of the case turning upon the question of what is the price and, therefore, what is discrimination in price?

Mr. Zimmerman: Will Counsel point out the language he has in mind?

Mr. Wooden: The actual price is the mill net; admitted there.

Mr. Zimmerman: There would be an additional objection as to that. In the first place there is no showing that any particular individual ever wrote the book, ever
9734 made the statement, when he made it, or to whom he made it, or the circumstances under which it was made, and, further than that, it would appear that the expression used therein was merely an expression of an opinion.

Mr. Leisure: And further than that—

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

I think, gentlemen, we have abundant, competent testimony on this point, and I think it is cumulative, in the first place, and probably much less satisfactory than what we already have.

Mr. Wooden: Your Honor, the principal point involved is the plain admission here in the publication of this Respondent Corporation that the mill net is the actual price received by the producer. That is a matter of controversy in this case.

Trial Examiner Norwood: I wouldn't think his general language there meant that, and if that is important I think we had better show that by somebody that knows.

Mr. Wooden: We will do that, too. We have shown it, but I would prefer, also, showing it out of the mouths of the Respondents, themselves, in moments of inadvertence.

Mr. Zimmerman: But that goes back a good many years

9735 before there was any association between the present members of the Institute.

Mr. Wooden: Some of them were associated together at that time; a good many of them.

Mr. Zimmerman: But not in any organization with these Respondents here now.

Mr. Wooden: No, not in any organization with these Respondents.

Mr. Zimmerman: You say it goes back as far as the basing-point system, this supposed wrong-doing or impropriety that the Respondents are called to account for now. How many years back would that be?

Mr. Wooden: Oh, I think we can show that in a few minutes if we get past this by some statements—

Mr. Zimmerman: I take it, as far as that is concerned—

Mr. Wooden: I think it goes back to since 1900.

Mr. Zimmerman: Since 1900; all right.

Trial Examiner Norwood: This says "price received."

Mr. Wooden: The actual price received.

Trial Examiner Norwood: Price applied in a great many things, and the proposition that that affects would bring it somewhat into the Robinson-Patman Act—prices received or some other price paid—

Mr. Wooden: Oh, I think—

9736 Trial Examiner Norwood: I don't know.

Mr. Wooden: It is the price which is the point of great controversy in this case, Your Honor, on account, too, it is built wholly upon what is the actual price.

Mr. Zimmerman: I did not know that there was any controversy about it at all. I thought everybody conceded that the thing which made it difficult for two or more dealers to compete with one another was what they had to pay for the commodity that they were undertaking to resell.

Mr. Wooden: Well, that means the actual price received.

Mr. Zimmerman: No, what they paid, not what somebody got out of it as the net, but what the dealers paid as a price.

Mr. Wooden: Not conceded at all, quite the contrary. It is contended in our proof that that is not what the producer receives, and is not the price.

Trial Examiner Norwood: Mr. White, did you receive this from an officer of the Hercules Company?

The Witness: No, I received it from—as I said before

—Mr. Charles Boynton, who is now deceased, I believe, with whom I was having conversations at that time and who was, I think, as I recall it, an officer of the Cement Information Bureau, and also of the Cement Manu-
9737 facturers Protective Association, which was then before the Supreme Court.

Trial Examiner Norwood: But was he connected with the Hercules Company?

The Witness: He?

Trial Examiner Norwood: Yes.

The Witness: Not to my knowledge. I say, his card indicated he was assistant to the president of the Atlas Corporation, or Atlas Cement Corporation.

Trial Examiner Norwood: The Hercules Products.

Mr. MacIntyre: In so far as Mr. Boynton representing the Cement Information Bureau, he represented not only the Hercules Company, but many of the other Respondents in this case at that time, and that same thing goes so far as his official position in the Manufacturers Protective Association is concerned.

Mr. Leisure: Mr. MacIntyre, it is conceded those associations are not defendants in this case.

Trial Examiner Norwood: I don't think we will receive that at this time.

Mr. Wooden: All right.

Trial Examiner Norwood: Until we find out something more about it,—its relevancy may appear later.

9739 Mr. Wooden: Your Honor, here again I wish to offer certain portions of the exhibit 1322,

9740 Mr. Zimmerman:

Now, this goes back long before the Respondent Institute was organized and could not have been what was in contemplation in that charge in the complaint.

Mr. Wooden: There is a group of some 75 concerns here, Your Honor, that are made parties respondent here. This pamphlet is the published statement of one of those respondents.

Mr. Zimmerman: Long before the organization of the present respondent Institute.

Mr. Wooden: That is true.

Mr. Leisure: Mr. White, I understood you to say that you did not know how you came to have this docu-
9741 ment, that you did not know where you got it from, is that correct?

The Witness: I was about to ask Mr. Wooden's permission to add to my remark that I was uncertain as far as that particular document.

Either that document, or a copy of it, was received from Mr. Boynton with a letter, which I think is still contained in my personal file.

Mr. Wooden: I note it bears the stamp of the Secretary's office of the Commission as of 1925.

9742 Mr. Leisure: Your Honor, I make the same objection to this document that I did to the previous exhibit. It comes under exactly the same category. It is incompetent, irrelevant, and immaterial. There has been no showing that it comes within the period of the complaint and the proceedings in this action.

Anyway, the statements, whatever they may be, could not constitute admissions. They are statements of opinion. They are not statements of fact.

Mr. Wooden: I disagree with that last statement entirely. They are definite statements of fact.

9743 Trial Examiner Norwood: I think he is stating it as a fact—

Mr. Leisure: There is no description—

Trial Examiner Norwood: —that such a custom was prevalent in the industry.

Mr. Wooden: That 26 years ago goes to the fact, Your Honor, that the basing point system came into existence at that time, or subsequent to that 26 years ago.

Mr. Zimmerman: Is there a distinction between the basing point system and the delivered price system?

Mr. Wooden: If you say the delivered price system of the Cement Institute, I would say there is no difference.

Mr. Zimmerman: Well, they have been selling at delivered prices since 1903, haven't they?

Mr. Wooden: They have gone beyond that.

9769 P. I. TAYLOR was thereupon recalled as a witness for the Commission and, having been previously sworn, testified further as follows:

9770 By Mr. MacIntyre:

Q. Mr. Taylor, I now show you documents which have been marked for identification as 1328, 1329, 1330, and 1331; and ask you to state what they are, if you can?

A. 1328 is a photostat of an abstract of bids received on May 28, 1930 for 60,000 barrels of cement for use in construction of the Deadwood Dam at the Boise project, Idaho.

1329 is a photostat of an abstract of bids for 1500 barrels of cement for use on the Minadoka Gravity extension (Gooding project), during fiscal year 1931.

The date of opening bid is not given on the abstract.

1330 is a photostat of an abstract of bid for 5,500 barrels of cement for use on the Salt Lake Basin, Utah, for the fiscal year, 1931.

1331 is a photostat of an abstract of bids received for approximately 200,000 barrels of cement under advertisement 16,125, for Owyhee Dam, bids open June 30, 1930.

Q. That is for how many barrels, Mr. Taylor?

A. Bids were taken on 5,000 barrels under one item and 200,000 under another item. That would be a total of 205,000 barrels; Exhibit 1331.

Q. Can you state for the record what points it was expected that the cement for each of these projects would be delivered; that is, at what points the delivery would be made?

9771 A. 1328, the destination point, Cascade, Idaho.

1329, Shoshone, Idaho.

1330, there were three destinations points: Coalville, Echo, and Wanship.

Q. What State were those in?

A. They were all in Utah.

1331, the destination point is Dunaway Siding. That is in Oregon.

Q. How do you spell that Dunaway?

A. D-u-n-a-w-a-y.

Q. Mr. Taylor, is there in the office of the Bureau of Reclamation, Department of the Interior, Washington, D. C., original bids or copies of bids against which these abstracts could be checked, if desired, on behalf of anyone?

A. In our files we have a copy of the contract with the successful bidder. The other bids would be in the General Accounting Office.

Q. Here in Washington?

A. Yes, Returns Office.

9778 Q. May I ask whether or not these Exhibits 1328, 1329, 1330, and 1331—I ask you whether or not they

are photostats of records in your office which served you as a basis for the action of your office in making awards to the successful bidder?

A. Yes.

Q. In each case?

A. The awards were made on the basis of those bids as received in our office.

Q. On the basis of those abstracts?

A. Yes.

Q. Of which these are photostats?

A. That is correct.

9782 Washington, D. C.,
October 28, 1938.

9784 JOHN P. SIMPSON was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Simpson, have you read the stenographic transcript of your testimony?

A. I have, sir.

Q. Taken in the last three or four days?

A. Yes, sir.

Q. Do you find any corrections in it that you wish to make?

A. A few stenographic errors.

9785 Q. Will you state what they are.

A. Page 9502, line 14, change "charges" to "tariffs."

Page 9509, line 25, change "carriers" to "tariffs."

Page 9537, line 1, change "base" to "date."

Page 9584, line 17, omit the word "of."

Page 9399, line 25, line 25, change the word "of" to "on."

Page 9404, line 18, "Atlantic-Birmingham Coast" should read "Atlanta, Birmingham & Coast."

The next line, insert a comma after "Southern."

Page 9416, line 1, change "rebut" to "recheck."

Page 9419, line 25, omit the word "of" following the word "disposition."

Here is one for Mr. Leisure's attention: Page 9441, line 8, change the word "could" to "could not." My recollection is my testimony was "could not."

Mr. Zimmerman: Wait a moment. We will have to think of that one a moment.

Mr. Leisure: You said what, do you think?

The Witness: I said "could not."

Then on page 9458—

Trail Examiner Norwood: What line?

The Witness: Page 9458, I failed to note my number on it.

Trial Examiner Norwood: Line what?

9786 The Witness: Line 6,—should be "would not" instead of "would." I took in too much territory there, and I am certain I said "it would not."

Trial Examiner Norwood: Let the corrections be made.

Cross Examination by Mr. Leisure.

Q. Mr. Simpson, now that you are on the stand with respect to corrections—

A. Yes.

Q. —I wish to direct your attention to page 9662 where the following statement is made by you in answer to a question, in which you say:

"It is my opinion that, so far as information has been placed in my possession as to the releases of the Cement Institute Freight Rate Bureau, no advice was given to the users of cement that the emergency charges were in force during the period from July 1, 1936, until December 21, 1936."

A. Yes.

Q. Do you remember that testimony?

A. Yes, sir.

Q. And you testified that there was an error during that period of time?

A. That there was—the cement book—the rate
9787 book as amended by the supplements which were placed in my possession contained such an error.

Q. Yes. Now, in making that answer, did you consider South Carolina correction sheet No. 3—

Mr. McFadden: North Carolina.

Mr. Leisure: North Carolina—it is marked "South Carolina."

Mr. McFadden: Well, there are four States there.

By Mr. Leisure:

Q. (Resumed) —North Carolina correction sheet No. 3 released on June 24, 1936?

A. I did not.

Mr. Leisure: Now, Your Honor, may I have that marked?

(A paper was thereupon marked for identification as Respondent's Exhibit 35.)

Trial Examiner Norwood: Is that something already in evidence?

Mr. Leisure: No. I am going to make an explanation, Your Honor, now. We turned over what we believed to be a complete file of these papers—I don't know why—

Mr. Wooden: Is that referring to the correction sheet?

Mr. Leisure: Yes. We have in our possession 9788 other correction sheets.

Mr. Wooden: Whether it is in our book or not, I dont' know, but the witness had the whole book before him.

By Mr. Leisure:

Q. Will you correct it?

Trial Examiner Norwood: He can testify that he did not consider that paper.

Mr. Leisure: Yes.

Trial Examiner Norwood: It may be marked Respondent's Exhibit 35.

By Mr. Leisure:

Q. And had you considered that, your answer would naturally have been different, would it not?

A. Had I considered that, my answer would have been that there was no error in that particular feature to which my attention was called.

Mr. Leisure: Thank you very much. That is all.

Mr. Wooden: Can you say, Mr. Leisure, whether or not that is from the North Carolina freight correction sheets?

Mr. McFadden: It covered four States.

Mr. Wooden: It covered four States including North Carolina?

Mr. McFadden: Yes.

9789 Mr. Wooden: I see.

Mr. Leisure: I would like to have that marked in the record at this time, if I may, because it goes with the other. Of course, we can wait and put it in with our case, but I think it would be more orderly to put it in now.

Trial Examiner Norwood: The correction sheet is received in evidence as Respondent's Exhibit 35, and I will state for the record that on October 25th the Respondent—

Trial Examiner Norwood: —that on October 25th the Respondent presented a paper which was received as an exhibit, and I am told was marked Respondent's Exhibit 32; that should have been No. 34. Please change that

And the exhibit which we are just receiving is Respondent's Exhibit No. 35.

9790 (RESP. EX. 35 was offered and received in evidence.)

9809 DONALD P. MacDONALD, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

9810 *Direct Examination by Mr. Wooden.*

I am attorney-examiner for the Federal Trade Commission and have been with the Commission since February 1934. In that period I have been assigned to the Chief Examiner's Division by the Chief Examiner to the Chicago office of the Division, out of which office I work and primarily make legal investigations. In the course of my official duties I made an investigation of the cement industry. I received instructions from the attorney in charge of the Chicago office to contact certain members of the cement industry during the late fall of 1936. I had other contacts on the border line of the industry as well.

Q. Can you state what companies you visited?

9811 A. I can state some of them.

Q. All right.

A. I talked to Mr. W. H. Timothy of the Signal Mountain Cement Company, on November 17, 1936, at Chattanooga, Tenn. At that time Mr. John L. Senor, president of that company, I talked with, and I believe with some other members of the industry who were also present.

On the next day I talked to Mr. H. F. Hughes and Mr. Frank Pearson, the traffic manager, and with the secretary and treasurer of the Cumberland Cement Company at Cowan, Tenn., and on the following day, November 19, 1936, I talked to Mr. E. D. Hill, vice-president and sales

manager of the Louisville Cement Company at Louisville, Ky.

And on that same day, November 19, 1936, I talked to Mr. E. M. Clancy, sales manager of the Cosmo Portland Cement Company, in the Stark Building, at Louisville, Ky.

Q. Did you examine the files at the offices of the various companies that you visited?

A. I examined files in the offices of each of those companies.

Q. Did you make selections and have them obtain copies or originals of files selected?

A. I did.

The witness was shown Com. Ex. 1186 A and B, which was in the record, and asked what he knew as to
9812 where the document came from. He said: "the same being—1186 B being page 2 of the first Exhibit, were secured by me from Mr. W. H. Timothy of the Signal Mountain Cement Company on November 17, 1936, and there appears on here my identification stamp which I put on it for my report to my chief"; the witness identified Com. Ex. 1186 C as page 1 and Com. Ex. 1186 D as page 2 of a document selected by him from the files of the Cumberland Portland Cement Company and furnished to
him by Mr. H. F. Hughes of that Company on No-
9813 vember 18, 1936. Stamped on the first page appears his exhibit stamp with the record of the date and the name of the informant, and so on.

Mr. Wooden: I will offer Commission's Exhibits 1186-C and D at this time, Your Honor. It appears to be a duplicate of the 1186-A and B, but because of the circumstances under which they were located in the files of the two competitors, of the Penn-Dixie Company, I make the offer.

Trial Examiner Norwood: Any objections?

Mr. Leisure: May I ask Mr. MacDonald a question, Your Honor?

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire.

By Mr. Leisure:

Q. Do you know anything more about this Commission's Exhibit 1186-C than you have already told us—I guess it is A and C— or C and D?

Trial Examiner Norwood: C and D.

A. Except that it is a list of base prices.

By Mr. Leisure:

Q. Well, that is what it says on the document.

A. And it was furnished to me upon my request for them for the Commission.

9814 Q. You have told us about that?

A. Yes.

Q. That is all you know about it?

A. Yes, sir. I merely asked for it and it was given to me for that purpose.

Mr. Leisure: I see.

The only objection we have to it, Your Honor, is if it be received—we ask that the evidence be received as against the parties involved, and no one else.

(COM. EX. 1186-C and 1186-D was offered and received 9815 in evidence.)

By Mr. Wooden:

Q. In connection with your interview with Mr. Timothy, what company was he with?

A. Signal Mountain Cement Company.

Q. Did you ask him for a list of base prices as used by his company?

A. Yes, sir?

Q. (Indicating) I am showing you Commission's Exhibit 1332, for identification; what is that?

A. Exhibit 1332, for identification, is a copy of the then present basing-point list that was prepared by Mr. Timothy at my request, and furnished by him to me.

It bears my identification stamp, put on it by me at the time I made my report to my chief.

Mr. Wooden: I offer that in evidence, Your Honor.

By Mr. Wooden:

9816 Q. Do I understand, Mr. MacDonald, that that was a list made up for you?

A. Yes, sir.

Q. Especially?

A. It was a copy of a list which I found in their files, and which, of course, they made for me.

Trial Examiner Norwood: Go ahead.

Any objections to the proffer?

Mr. Leisure: We make the same objection to this exhibit that we made to the preceding exhibit; it comes under the same category.

Trial Examiner Norwood: Have the other Counsel seen the paper?

(Mr. Leisure hands paper to Mr. Zimmerman.)

(COM. EX. 1332 was offered and received in evidence.)

Q. Mr. MacDonald, was the Louisville Cement Company one of the concerns on which you called?

A. Yes, sir; it was.

Q. Whom did you see there?

A. Mr. E. D. Hill, vice-president and sales manager.

9817 Mr. Leisure: Now, if the witness is going to testify with respect to that company, I point out to Your Honor that they are not Respondents—

Mr. Wooden: Just a moment—we will come to that point in a moment.

Mr. Leisure: Well, I am already to it. I object to that testimony.

Mr. Wooden: All right.

Trial Examiner Norwood: All right.

By Mr. Wooden:

Q. Let me ask one further question, Your Honor, before you pass on that.

Trial Examiner Norwood: Go ahead.

Q. When did you call on Mr. Hill?

A. On November 19, 1936.

Q. Did you discuss with Mr. Hill the matter of his membership in the Cement Institute?

A. Yes, sir.

Q. What did he tell you?

9820 A. Mr. Hill advised me that his company had been a member of the Institute.

He advised me that because there were certain documents in there relating to the Institute and from the Institute, and he asked that in explanation of those documents.

However, he said they had resigned from the Institute as of September, 1936. I asked him for a copy of that resignation. He could not find it.

Q. Did you ascertain from him whether or not he

9821 claimed to have been a member subsequent to the N. R. A.?

A. Yes; he said he was a member during that period and up until September, 1936.

The witness identified Com. Ex. 1015-A, 1015-B and 1015-C as three documents furnished him by Mr. Hill from

the files of the Louisville Cement Company. Com. Ex. 1073-F is another such document. "1073-F is a photostatic copy of such document as is 1073-G, but 1073-G is the photostat of the reverse side of the page of
9822 1073-F, and at the bottom of Com. Ex. 1073-F is a notation that indicates that it carries over." Mr. Hill told him he had submitted his notification of resignation in the previous September, that is September of 1935. He said, "in the previous September, in September of the previous year," is the way he put it. Com. Ex. 1015-A, 1015-C and 1015-B were in files which Mr. Hill permitted him to take to the Chicago office of the Commission for further examination and copying. They were copied by "our" stenographers and compared by him in "our" Chicago office, the originals being returned to Mr. Hill. The witness will vouch for the accuracy of those copies.

Mr. Wooden: I offer these papers at this time.

Your Honor: Commission's Exhibits 1015-A, -B, and -C, and 1073-F and -G.

(The documents were handed to Mr. Leisure.)

The Witness: Off the record. There was no "D"
9823 handed to me.

Trial Examiner Norwood: Go ahead, gentlemen.

Mr. Wooden: There are some exhibits pending, I believe, in offer.

Trial Examiner Norwood: Yes.

Mr. Leisure: With respect to Exhibits 1015-A, -B, and -C, and 1073-F, and -G, we object to all of these exhibits as being incompetent, irrelevant, and immaterial.

Now, the only theory I know of in law in which Counsel could offer exhibits of this kind would be on the theory that they were admissions against a respondent.

Now, since this company, Louisville Cement Company, is not a respondent, they cannot be offered on that theory, and I submit that they are incompetent.

Exhibits 1073-F and -G, I note that the date is November 2, 1936, and according to the witness' testimony this company filed its resignation in September, 1935, so that with respect to that exhibit they were not even members of the institute, much less not being respondents in this proceeding.

9824 Trial Examiner Norwood: What is the extent of the connection of these people with these activities generally?

Mr. Wooden: They were members of the Institute at the time all of the papers were written, and they were written in the course of their relations with the Institute as members.

The correspondence is with the Institute, to some extent, and as to that subject of the date, I must confess I am somewhat impressed by Mr. Leisure's point.

Trial Examiner Norwood: That applies to Commission's Exhibit 1073-F and -G where the date is subsequent to their resignation?

9827 (COM. EX. 1015-A 1015-B, and 1015-C, was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. MacDonald, was the Kosmos Portland Cement Company one of the companies you called upon?

A. Yes, sir.

Q. Whom did you deal with there?

9828 A. I talked to Mr. E. M. Clancy.

Q. Who is he?

A. Salesmanager of the Kosmos Portland Cement Company.

They are located in the Stark Building, Louisville, Kentucky, and I talked to him November 19, 1936.

Q. 1936. Showing you an exhibit marked 1015-D, for identification; what do you know about that paper (handing document to the witness)?

Mr. Wooden: Will you mark this for identification while he is examining that document?

(The document referred to was marked Commission's Exhibit No. 1333-A and 1333-B, for identification.)

A. This is a copy of a document found by me in the files of the Kosmos Portland Cement Company (referring to Commission's Exhibit 1015-D, for identification).

The original document was loaned to me by Mr. Clancy to take to our Chicago office for the purpose of copying.

After copying and having been compared by me, it was returned to Mr. Clancy.

On the bottom of the copy appears my identification exhibit stamp and legend identification.

Mr. Wooden: I will offer that at this time.

(The document was handed to Mr. Leisure.)

Mr. Leisure: Other than the objection we ask that

9829 the evidence be confined to the dates involved, we have no other objection.

By that I mean the dates mentioned in the document.

Mr. Wooden: Isn't the Institute a party to that paper? It appears to be a communication of the Institute.

Trial Examiner Norwood: No further objections?

(No response.)

Trial Examiner Norwood: The exhibit is received as marked.

(COM. EX. 1015-D was offered and received in evidence.)

The witness identified Com. Ex. 1333A as a copy of the list of base prices which was furnished to him by Mr. Clancy in response to his request for a list, or a copy of a list of the then current base prices. The original
9830 of the list was found in Mr. Clancy's file. The witness said that Mr. Clancy stated that the list was then being used by his company.

Mr. Wooden: I offer it in evidence.

Examination on Voir Dire by Mr. Leisure.

The witness identified Com. Ex. 1333 B as a copy furnished him by Mr. Clancy of a document found in "his" files, which was furnished in response to his request that Mr. Clancy give him the previous list of base prices. The witness asked him for the list of base prices used by his company. That is what he gave him in response to
9831 that request. That is true of the first document also.

The witness does not know why some of the figures on Com. Ex. 1333 B are in red. This was furnished him in response to that request and whatever their particular markings are, he doesn't know. The pen insertion was on there when the document was received by the witness and when he gave it to the witness.

Mr. Leisure: We make the same objection we made to the previous exhibit.

(COM. EX. 1333-A and 1333-B was offered and received in evidence.)

By Mr. Wooden:

Q. Just for clarity, Mr. MacDonald, do I understand correctly that 1333-A was the list then being used, while 1333-B was the list which had been used just prior to the time 1333-A was being used?

9832 A. That is correct. That is the information that was furnished me by Mr. Clancy.

Q. Mr. White, referring to Respondent's Exhibit 35, for identification, have you made a search or check to ascertain whether a duplicate of that paper was among the correction sheets furnished by the Cement Institute counsel?

A. I have.

Q. What check did you make?

A. I examined the four books to which this purports to be supplement "A"; that is, Louisiana, Mississippi, North Carolina, and South Carolina.

9833 Q. Did you find it among any of those four books?

A. I didn't find a duplicate, or anything equivalent to this. I did, however, find a supplement A to each of those books, dated August 30—or issued August 30, 1938, on quite a different subject.

Q. So by date some two years later there is a supplement A to the North Carolina rate book on a different subject?

A. Supplement A, and other lettered supplements.

Q. So, you would say that there appears to be—if Respondent's Exhibit 35 is accepted—that there appear to be two Supplements A for the North Carolina rate book No. 3?

A. That is, at least one supplement A, as I have said, of a different date, on a different subject, in each of those books.

Q. You found another Supplement A to the North Carolina rate book?

A. Yes, that's right.

Q. Two years' later date?

A. That's right.

Q. And you did not find among the correction sheets submitted by the Institute a duplicate of Respondents' Exhibit 35, for identification?

A. Nor anything resembling it.

9880 *Examination on Voir Dire by Mr. Leisure.*

9885 Q. You see on the left there the rate was given as a hundredweight, and you transcribe it into a barrel equivalent, you have just said?

A. That's right.

Q. How did you do that? I want to know what you used?

9886 A. The rate multiplied by 3.8, as I recall it.

Q. 3.8?

A. Being the formula shown in the Cement Institute rate book.

Q. Why did you use 3.8, because it was in the rate book?

A. Because it is customarily used in other territories. I don't know what is used in the western territories.

Q. You know there is no showing that they used the rate book out there?

A. It is not a question of what is shown in the rate book. It is a question of the product of some figures, of 380 pounds, multiplied by 34 cents would produce, as I look at it now, $1.29 per barrel.

9889 *Examination on Voir Dire by Mr. Zimmerman.*

Q. Well, now, when you took the freight rate per hundred pounds like Topock, Arizona, and you multiplied 34 cents a hundred by 3.8, it did not come out even $1.29, did it?

9890 A. It may not have come out, but it should come out $1.29 observing the usual rule for disposition of fractions.

9893 Q. What I want to find out is this: Is there any custom in your profession as to how freight rates should be figured, and what you would do with reference to the fraction of a penny?

A. I think there is a general statistical rule that fractions of one-half or over should be carried out to round figures and fractions of less than one-half cent should be dropped. Whether I used that rule in this case or not, I don't know.

9899 Washington, D. C.,
November 1, 1938.

9903-A (COM. EX. 1319 was offered and received in evidence.)

(COM. EX. 1320 was offered and received in evidence.)

9972 (COM. EX. 1328, 1329, 1330, and 1331 were offered and received in evidence.)

9973 REAR ADMIRAL CHRISTIAN JOY PEOPLES, being called as a witness on behalf of the Commission and being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

9974 I am director of procurement, U. S. Navy. I think I can best state what that term includes and what my duties as such director have consisted of by quoting from Executive Order No. 6166, which was issued June 10, 1933, and later approved by Congress:

"The function of the determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipments, stores and supplies exercised by an agency in the transfer to a procurement division in the Treasury Department, at the head of which shall be a Director of Procurement, in respect to any kind of procurement, warehousing, or distribution for an agency, the Procurement Division may, with the approval of the President (a) undertake the performance of such procurement, warehousing or distribution itself, or (b) permit such agency to perform such procurement, warehousing, or distribution, or

(c) entrust such performance to some other agency

9975 or (d) avail itself in part of any of these recourses according as it may deem desirable in the interest of economy and efficiency."

I may leave for the record, if you wish, a copy of that order.

Q. Well, you might leave it for the examination of—

Trial Examiner Norwood: Your statement covering

the duties is sufficient in this hearing. We just want the general information.

The Witness: Yes, sir.

By Mr. Wooden:

I was appointed director of procurement November 23, 1933, practically five years ago. The office of director of procurement has not been filled from the date of the order until the date I took charge of the creation of the division. My whole experience in the Navy has been in the service of supply, both afloat and ashore. For a period from 1904 to 1911 I created the purchase system of the Navy. During that time I commenced the preparation of standard specifications, after consultation with the technical
9976 bureaus of the Navy Department, and which were published as Navy Standard Specifications. During the period that followed I made a three-year cruise on the battleship Utah, then attached to the Atlantic Fleet. From 1914 to 1921 I was again ordered back to Washington as the Assistant Chief of the Bureau of Supply in the Navy Department.

9977 During that period I handled exclusively all matters for supplies pertaining to the Navy. It was a period of expansion and development. We developed the fuel system of the Navy and also during the war some special duty such as the creation of the Exports Control Committee which was upon my own recommendation; "the connection with the Clearance Division of the War Industries Board". Then followed a tour of 9 years as Inspector General for the Supply Corps of the Pacific Coast. My duties as such covered the inspection of all Navy stations and bases in the Pacific from the Canadian Border to the Mexican Border; that is, all things pertaining to supplies and service of supplies for shore stations as well as the fleet in the Pacific.

In 1930 I took command of the Fleet Supply Depot at South Brooklyn.

In 1933 I was ordered back to Washington by the President and became the Chief of the Bureau of Supplies and Accounts under which I served for two years, from 1933 to 1935. It was in November of 1933 that I assumed in addition to my duties as Chief of Bureau of Supplies and Accounts of the Navy Department, the duties of the director of procurement.

9978 The function of the determination of policies pertaining to the procurement of supplies is part of the duties of the director of procurement and in carrying out those duties I was authorized to exercise them under any one of four different conditions. As director of procurement it has been my policy that where an agency was performing a special mission and was doing that mission efficiently and well, to recognize that agency as part of the Procurement Division and in that respect the Purchase Division of the Navy Department is authorized to go ahead and handle their own special stock. That applies also to the War Department and the Post Office Department. At the same time the Procurement Division has devoted special effort toward the preparation of contracts for standard supplies which are required by two or more branches of the Government's service. These contracts are a source of supply for whatever agencies may call for them. There is an interlocking arrangement because the volume is so great.

Examination by Trial Examiner Norwood.

9979 My duties in connection with the Supply Service of the Navy has drawn me in direct contact with the business world in general, commodities in particular; delivery and methods and that sort of thing.

Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Admiral, do you have any figures or estimates that you can give us as to the volume or value of purchases made under your general supervision as Director of Procurement?

9980 A. Yes, sir. Just to take a moment to answer (examining papers).

I have here a statement which I can submit for the record, which gives the summary of the total purchases for the fiscal year 1936-37 and '38.

In '36—these are purchases that are handled,
9981 gentlemen, directly by the Procurement Division.
1936, $246,672,139.69.

1937, fiscal year, $247,003,476.93.

Fiscal year 1938, $148, 824,484.60.

By Mr. Wooden:

Q. Can you tell us how much of that consisted of the purchase of cement?

A. During the fiscal year of '36—

9982 A. During the fiscal year 1936, the approximate value of the cement purchased was seventeen million dollars.

Q. Is that the value that consists of the sum of all the delivered prices?

A. Yes.

9983 Q. Can you state, at all, how much of that is so-called standard cement, and how much special cement?

A. I haven't got that data right here.

Q. In other words, on the face of—

A. No, I will tell you, because the cement is merely one item of a class of building materials including brick and stone, and, say, during that fiscal year, '36, the total value was $56,540,782.56, of which there was approximately seventeen million dollars covered by cement.

And for '37, the value was approximately twenty million dollars. I have here a complete analysis by classes but don't want to take up too much of your time.

By Mr. Wooden:

9984 Q. Relating to cement, is that right?

A. Now, before '38 there was approximately nineteen million.

Q. The twenty million dollars you previously mentioned was also for cement, was it?

A. Yes, sir.

Q. Will you state, Admiral, in a general way, for what purposes cement has been purchased by the Procurement Division or Departments under its supervision?

A. Well, I will answer that question, sir. I will have to go into details of quantities which appeared in a number of various schedules, I think 22 in all, which have been issued by the Procurement Division commencing with March, '36.

9986 A. I think then the answer will be that since April 15, the figures show that for all departments and independent agencies, including State procurement officers, 17,500 orders have been placed involving purchases to the extent of approximately five million barrels, by all agencies, of which approximately one and a half million barrels were purchased directly from manufacturers, and approximately three and a half million barrels directly from dealers.

By Mr. Wooden:

Q. The intent of my question was what use was made of the cement? Can you give us an idea of the various classes of use to which it was put, after being purchased?

A. The answer to that, sir, is that the purposes for which cement were used are ten thousand-fold.

Q. Give us some of the principal ones.

A. This cement is used for work, building work in Navy yards, arsenals, for carrying on building projects for the work relief, the Works Progress Administration, for each and every kind, practically, of any kind of a job or project that is undertaken by the W. P. A. requiring cement—sewers, sidewalks, swimming pools, buildings of all kinds. In fact, it may have been used for cement in the holds of ships, repair work, and the dry docks, building projects within Army forts, and so forth.

Q. How about bridges?

9987 A. What, sir?

Q. Bridges?

A. Whatever bridges may have been built by the W. P. A., yes.

Q. Have there been some?

A. I can't answer that question, definitely.

Q. How about highways, roads?

A. I think, yes; highways that were handled by the Works Progress Administration. For highways handled by the Bureau of Public Roads, no.

Q. In other words, your statements and your figures don't include the purchases of the Bureau of Public Roads?

A. No, sir; for the simple reason that the Bureau of Public Roads' whole building program has been handled very largely through the State highway commissions on approved routes and that sort of thing whereby the Federal Government met an equal allotment by the State or within the last few years where the appropriations were made direct, but those purchases were usually made by the contractor for the road, made direct, or they may have been made by the State highway commission.

I think the Bureau of Public Roads directly have made comparatively few direct purchases of cement.

Q. Admiral, will you state briefly the history of the methods that you used as Director of Procurement to ob-

tain cement? Just how you went about obtaining cement, and—

9988 Mr. Leisure: Your Honor, if that is confined to a period covered by these pleadings, I have no objection to it. If it is going back into that, if we are going into and follow up transactions that are not within the issues of these pleadings, I do.

Mr. Wooden: Director of Procurement since 1933, I presume—

Trial Examiner Norwood: What period do you consider covered by the pleadings?

Mr. Wooden: An indefinite period, as a matter of fact. My question was confined to the methods used by him as Director of Procurement.

A. Up to March 30, 1938, it had been the custom for each department or agency to purchase its own cement other than the direct purchases which had been made by the Procurement Division for W. P. A. according to which figures I have already reported.

On March 30 specifications and proposal issued—

Mr. Zimmerman: March 30 of what year?

The Witness: 1938, sir.

By Mr. Wooden:

Q. Admiral, before you begin any description of what happened then, and subsequently, I want you to state what the methods were before that time?

9989 A. The methods before that time were in the usual way—that is, the sending out of proposals to the dealers in a community after advertisement in some form went through, newspaper advertisement, or through poster advertisement; the opening up of the bids—

Q. You say "sending out to dealers."

A. To dealers and manufacturers.

Q. And manufacturers?

A. Oh, yes. There was no discrimination ever made. Commencing March of this year, though, one of the provisions of section 3709 Revised Statutes under which we operate provides that the purchases shall be made after advertisement.

Trial Examiner Norwood: Made when?

The Witness: Made after advertisement.

A. (Continuing) The contract awarded to the lowest responsible bidder.

We had found that in most cases we could not, through the individual agencies, secure bids f.o.b. mill because, why, we didn't know, but the system of identical bidding appeared to be contrary to the provisions of section 3709.

Mr. Zimmerman: If the Examiner please, I am bound to interrupt.

I do not believe the Admiral's answer is within
9990 the scope of the question. May I ask that the question be read?

Mr. Wooden: It is all right with me. I am the one to object if it is not responsive.

Mr. Zimmerman: I, also.

Will you read the last question?

(Last question read.)

Mr. Zimmerman: I have no objection to him responding to that question, be describing the methods that were used, but I do object to the conclusions with reference to what they had found. That doesn't have anything to do with method.

Mr. Wooden: I would have asked the question to bring that point out if you hadn't objected.

Mr. Zimmerman: Then we would have had an opportunity to object to that question if it was objectionable, but if you ask a question and permit an answer to be made that does not pertain to it, we are not in that position at all. I think the Admiral should—

Trial Examiner Norwood: You move to strike everything in the answer after where he said, "We had found" —and so forth?

Mr. Zimmerman: Yes, I do, and he may cover that by another question, if he desires.

Trial Examiner Norwood: Motion allowed.

9992 "Q. Admiral, what conditions did you find in your purchasing of cement prior to March, 1938, that led you—that led to any change in your method of purchasing?")

Trial Examiner Norwood: The objection is overruled and the witness may answer the question.

A. The conditions we found were the system—that is, we found identical bids which led us in an effort to secure competition to adopt a new method, or in the hope we would secure competition to adopt a new method.

By Mr. Wooden:

Q. When you speak of identical bids, do you mean identical bids on a delivered basis, or what?

A. Identical bids on a delivered basis; yes, sir; because although a number of proposals under the method formerly used by issuing proposals f.o.b. mills usual-
9993 ly resulted in negative results, with certain minor exceptions pertaining to deliveries from the northwestern mills which—

Q. You mean the Pacific Northwest?

A. The Pacific Northwest where bids had been received f.o.b. mill basis.

Then commencing on March 30th, we changed the methods, and a proposal was issued to 109 firms, manufacturers all over the country, and the method there proposed was to invite bids on the basis of f.o.b. mill. The quantities, however, were indefinite. The conditions of that proposal provided that cement would be ordered from time to time in such quantities as may be needed, as it is impossible to determine the precise quantities of different kinds of cement described in the specifications and proposals for supplies that will be required during the contract term.

"Each bidder whose bid is accepted will be obligated to deliver all cement of the kind contracted for that may be ordered from him during the contract period. The contract period is for a period of 4 months."

Mr. Zimmerman: May I ask what it is, Admiral, that you are reading from?

The Witness: What, sir?

Mr. Zimmerman: What is the page you are reading from?

The Witness: This is the official proposal that
9994 was issued to all of the cement—109 cement dealers.

Mr. Zimmerman: What I mean is, could you give us the number or the date, or something of that sort?—

The Witness: Oh, certainly, very happy to do so.

Mr. Zimmerman: —by which we could identify it?

The Witness: It was issued March 30, 1938, by the Procurement Division from the period of May 1, 1938, to August 31, 1938. Bids were advertised to be opened at 10 a. m., Friday, April 15, 1938.

By Mr. Wooden:

Q. Do you have a copy of that memorandum?

A. I have, sir.

I want to set forth another—this is part of the method I am trying to answer in answering that question.

"In this proposal, for the purpose of receiving bids and making awards, the United States has been divided into zones and the zones have been in many cases subdivided into subzones listed below. Every mill may submit a bid on each item for the zone in which it is located and for the sub-zone, if any. Awards will be made to the lowest acceptable bidder in the zone and/or sub-zone in the discretion of the contracting officer."

Mr. Leisure: Are you going to offer the proposal?

Mr. Wooden: Yes.

I don't know that it will be necessary to read any
9995 more of the proposal, if we put the proposal in evidence, which I propose to do.

The Witness: One salient point which pertains to the method, sir.

Trial Examiner Norwood: Yes.

The Witness: It also provided that the contract purchases from successful bidders will be made from the contract-holding mill, which is so situated that the contract price of the cement plus the transportation to destination will be lower than price plus transportation from any other contract-holding mill. Limits of zones therefore do not define the areas in which deliveries may be taken.

Mr. Wooden: I will put that in the record as an exhibit if you will provide me with a copy, Admiral.

The Witness: It goes on to set forth the different kinds of cement, blank spaces for the location of the mill, and so forth. That is issued under March 30th.

Mr. Wooden: Give this a number, please.

The Witness: I have here—

Mr. Wooden: Just a moment, please.

(The document referred to was marked for identification "Commission's Exhibit 1339.")

By Mr. Wooden:

Q. Do you have a list of the parties to whom this
9996 proposal, which I have had marked Commission's Exhibit 1339, for identification, was sent?

A. I have here a list, sir, of 109 firms, mills, manufacturers, and so forth, to whom that proposal was issued.

Mr. Wooden: Will you mark this "1340"?

The Witness: Located all over the country.

Trial Examiner Norwood: "1340."

(The document referred to was thereupon marked for identification "Commission's Exhibit 1340.")

Mr. Wooden: I will offer at this time, Your Honor, these papers which have been marked as Commission's Exhibits 1339 and 1340, consisting of, respectively, the proposal which the Admiral has been describing, and the list to whom the proposal was sent.

The Witness: This is a part of the method I continue—

Mr. Wooden: No, no.

Mr. Zimmerman: Let us look at this first.

Mr. Leisure: May I ask the Admiral a question about this exhibit?

Trial Examiner Norwood: Certainly.

Mr. Leisure: Commission's Exhibit 1339, Your Honor?

Trial Examiner Norwood: Yes.

Examination on Voir Dire

9997 By Mr. Leisure:

Q. Admiral Peoples, I observe attached to the proposal is a schedule—

A. Yes, sir.

Q. —do you know who prepared that schedule?

A. It was prepared in the Procurement Division, sir.

Q. And the proposal, itself, who prepared that?

A. In the Procurement Division; the whole work was done there.

Q. Do you know who prepared it?

A. Yes.

Q. Who?

A. About four, five, or six of our men. Mr. Landick was one.

Mr. Hershberger: How do you spell that name?

The Witness: L-a-n-d-i-c-k.

A. (Resumed.) Captain Collins—H. E. Collins, Assistant Director of Procurement in charge of the Supply Branch, and—oh, there were about three others. I had a hand in it, too, sir.

By Mr. Leisure:

Q. On the schedule, did they prepare the schedule also?

A. The whole thing—the whole thing was all prepared there; yes, sir.

Mr. Hershberger: Who were the authors of that?

9998 Mr. Leisure: I beg your pardon?

Mr. Hershberger: See if you can find who the author was.

(Mr. Hershberger and Mr. Leisure confer off the record.)

By Mr. Leisure:

Q. Now, I notice that there is in Commission's Exhibit 1340 a list of names designating to whom, I suppose, this proposal went?

A. Yes, sir.

Q. In fact, I think you said so?

A. Yes, sir.

Q. Do you know just how those names were selected, Admiral?

A. The names were selected with an effort to include each and every mill in the United States.

Q. I see.

A. I think perhaps—practically all of them had been on their mailing list before, but the object, though, was to make as—cover the field as comprehensively as possible.

Q. Did the selection of these mills—was there any suggestion from anyone outside of your own department as to what mills should be included?

A. No, sir; no, sir.

Q. And as to the proposal?

A. No, sir.

9999 Q. Do you know how that originated?

It originated in our effort to change the method from the identical bidding system, in an effort to get competition, sir.

Q. Did you have any conferences with anyone outside of your department in determining upon this method?

A. I had a great many different conferences with different people.

Q. I suppose you had some with the Federal Trade Commission?

A. No, sir; did not.

Q. With none of the representatives?

A. None whatever, sir; none whatever; none whatever.

I don't think the Federal Trade Commission knew anything about it, not a bit, sir.

Of course, in the handling of these proposals, gentlemen, legal questions are involved. We consulted our legal people, General Counsel's office, they were the best people we had, the best technical assistance we had in the division proper, but I am sure there wasn't any outside firm. I know positively the Federal Trade Commission was not consulted, and I am sure there was never any outside bidder, or business man consulted about it.

Q. Now, you named a group of men who prepared it. I do not suppose the entire group of men originated
10000 the idea of the proposal. Do you know who originated the idea of this proposal?

A. Well, gentlemen—the question appeared—it has always been my policy as Director of Procurement to insist on competition—

Q. I am not—

A. —through the whole seven years.

Q. I am not talking about competition at the moment, Admiral.

A. But I mean—

Q. I am going to get to that later.

Trial Examiner Norwood: He is leading up to it. Let him finish.

A. I insisted on the issuing—that is, the changing of the method—

Q. Did you originate—

A. —in an effort to get competition.

Q. Did you originate the idea of this report?

A. The general idea; yes, sir.

Q. You set out these ideas?

A. Yes.

Q. And asked that they be put in some printed form; is that the way it was done?

A. Worked up the conditions under which we thought we could get competition from mills all over the
10001 country; yes, sir.

Q. So that the idea of doing it in this way was your idea, later developed in your department?

A. Exactly.

Mr. Leisure: We have no objection to the exhibits, Your Honor.

(COM. EXS. 1339 and 1340 were offered and received in evidence.)

10002 *Direct Examination by Mr. Wooden (Resumed).*

Q. Admiral, what ground did you have for thinking that a change in this method of obtainiung bids from the delivered price basis to f.o.b. mill basis would correct the condition that you wanted to correct?

10003 A. The grounds or reasons for the issuance of that proposal to be opened April 15, were, as I stated before, bids have been—

Mr. Zimmerman: Then, if he has already answered, I would object to making another answer.

By Mr. Wooden:

Q. I think you have wandered a little from the form of my question, Admiral.

The question was the grounds for believing that the change which you initiated last March would correct the conditions that you were seeking to correct?

A. Yes, sir. The grounds were—under the former system, or former method, the result of the bidding was

10004 identical bids, and in order to secure competition, if it were possible, the change from an f.o.b. designation basis to the f.o.b. mill basis, as covered by this circular dated March 30, or opened on April 15.

Q. I still would like to know the grounds for thinking that a change to the f.o.b. mill basis would correct the conditions that you wanted to correct?

A. We had hoped that as a result of this method that we would get competition. The grounds were purely in an effort to get competition.

10005 Q. I understand that.

A. Yes.

Q. What grounds did you have for thinking that you would get competition if you got the f.o.b. mill basis?

A. We couldn't tell until after the bids were opened.

Q. Yes.

A. No one can tell in the issuance of a formal proposal as to what the results are going to be until after the bids are opened, and you see what the results are, until the cards are laid on the table, and the bids are revealed.

M. Zimmerman: I object.

A. We certainly hoped to; we certainly hoped to.

Q. I will repeat the question, if you do not mind, as to what you thought—as to why you thought you would get competition under the f.o.b. mill basis?

10007 A. I can explain the question and I think answer it better by saying this: That in many years of experience in connection with the purchasing of commodities for the Federal Government we found that in many cases we could secure better prices by inviting bids f.o.b. mills than we could f.o.b. destination.

10008 By Mr. Wooden:

Q. You mean by that, Admiral, that you found in your experience that by purchasing f.o.b. mill you frequently could lower the cost to the government of the material, plus the transportation charges to where you wanted it?

A. In some commodities, yes.

We would cover it by this way: For instance, like wiping rags and steel and tin provisions, to invite bids both was, f.o.b. factory, or f.o.b. point of production, with an alternate bid f.o.b. destination.

Then, when the bids were opened the cost to the government of the freight charges as quoted by the lowest bidder to point of destination, if they were lower, the contract would be awarded f.o.b. point of production.

If, on the other hand, there was no difference, the contract would be awarded f.o.b. destination.

The reason for that is that in many cases land grant deductions from the railroads comes into the picture and so our general experience has been that in the non-land grant areas there was very little gained by f.o.b. mill bidding.

Q. Otherwise—

A. In the land grant areas there was a difference.

Q. Was there a subsequent multiplication?

A. Well, here is another illustration on that point, sir, if I may interpolate.

10009 Trial Examiner Norwood: Go ahead.

A. Take, for instance, buying an automobile, one automobile. It is wanted, say, for delivery at Portland. Now, to advertise for that automobile f.o.b. mill Detroit, the price to the government we found oftentimes to be higher than f.o.b. Portland because the Portland dealer had received his shipment in a carload lot, and, naturally, there was a cheaper freight rate than the government would have to pay on a single automobile.

Q. Did you find in purchasing f.o.b. mill that certain mills might be nearer the place where you wanted to use it, and, therefore, your transportation charges would be less than some other mill?

A. Yes, that often occurred, yes.

Q. So that in buying f.o.b. mill, was there not that other advantage that you could give it to the mill which was most favorably located to the place you wanted to use it?

A. Yes, yes, sir.

Q. Resulting in a lower delivered cost to the government?

A. Lower delivered cost, yes, sir.

The condition varied so much with respect to different times of the year and with respect to different commodities and different points of deliveries that it is a difficult thing to give a general answer which would cover them all. I have tried to give a general answer.

Q. Was that last consideration one of the grounds 10010 that led you to believe that you could obtain similar advantages by a change in your method of purchasing cement?

A. We didn't know until we found as a result of the bidding.

Q. Well, I know that.

A. Yes, sir, on the general principle.

Q. You expected to do that?

A. We expected to, hoped to, sort of a general condition, perfectly true.

Q. Well, now, was there a change in this invitation of—what was it? March 30?

A. Yes.

Q. Of March 30, Commission's Exhibit 1339? If so, tell us what it was.

A. To answer your question, sir, the next proposal is called "specification No. 13,290, S.P. 428."

Q. If you will let me give that a number, I will have you refer to it by exhibit number.

A. Yes, sir.

(The document referred to was marked Commission's Exhibit No. 1341, for identification.)

By Mr. Wooden:

Q. The document I have just been referring to has been marked "Commission's Exhibit 1341," for identification.

Will you please refer to it by that number hereafter,
10011 Admiral?

A. Document 1341, yes sir.

This called for sulphate-resisting Portland cement for the Department of the Interior, Bureau of Reclamation, Hart Mountain Division, the Shoshone Project, Wyoming. Bids were to be opened April 28, 1938. I have a list of the firms to which those proposals were issued. It covered a specified quantity of 35,000 barrels, f.o.b. cars at the mill. That is a different method covering that particular quantity.

Q. To whom was that proposal or invitation sent?

A. That was sent to all the firms in the vicinity of Colorado and Wyoming. There were 2, 4, there is 7 of them. Monolith Portland, Midwest Company—

Mr. Leisure: Are you going to open that?

Mr. Wooden: I shall, yes.

Mr. Leisure: Well, I—

Mr. Wooden: But he is merely—

Mr. Leisure: If you are not going to offer it, I won't object to having it read, unless we get a chance to see it.

Mr. Wooden: He is merely stating to whom it was sent.

Mr. Leisure: Yes, but he is reading.

Mr. Wooden: Not from that exhibit. He may have some notes there.

10012 By Mr. Wooden:

Q. The question was: To whom was that proposal, Commission's Exhibit 1341, sent?

A. The proposal, Commission's Exhibit 1341, was sent to the 7 firms on this slip.

Q. Will you name them?

A. Monolith Portland Midwest Company with offices at Denver, Colorado, and Laramie, Wyoming; the Colorado Portland Cement Company with offices in Denver, Colorado, and Boettcher, Colorado; the United States Portland Cement Company at Denver, Colorado; the Three Forks Portland Cement Company at Denver, Colorado; and Trident, Montana; the South Dakota Cement Plant, Rapid City, South Dakota; the Portland Cement Company at Utah, Salt Lake City; the Idaho Portland Cement Company of Inkom, Idaho.

Q. Did you get bids from those companies on f.o.b. mill basis?

Trial Examiner Norwood: You are offering Commission's Exhibit 1341?

Mr. Wooden: I haven't, as yet. I may as well offer it now and do.

Mr. Zimmerman: Shouldn't the inquiry be as to whether he got bids from those companies? The nature of the bids would be disclosed by the bid itself. It is not essential for the witness to characterize it.

Trial Examiner Norwood: Well, ask him—

10013 The Witness: Wait a moment.

Mr. Zimmerman: Mine was a serious objection. It wasn't intended to be technical. The point is this: We would have no objection to production of the bid itself.

Trial Examiner Norwood: Counsel did not object. Counsel merely suggested a change of the question.

You have a right to object; not to suggest changes in the question—

Mr. Zimmerman: My objection is to the form of the question.

Trial Examiner Norwood: Not wasting our time to have other particulars brought out before these particulars, and so on. We have wasted time on that.

Mr. Zimmerman: The question called for a characterization of the bids, that is the form of my objection.

Trial Examiner Norwood: I will consider it now.

Read the question.

(Last question read.)

Trial Examiner Norwood: The objection is overruled. You may answer that.

The Witness: I would like to refer to my record.

10014 I want to see the official record as to the result of that opening.

Trial Examiner Norwood: The hearing will come to order.

Mr. Wooden: What is the state of the record?

The Reporter: (Reading) "Q. Did you get bids from those companies on f.o.b. mill basis?

"A. I want to see the official record as to the result of that opening."

A. The official record shows that bids were received from three firms; Monolith, Colorado Portland, United States Portland Cement Company, f.o.b. mill.

10015 Q. Were the bids f.o.b. mill or delivered?

A. F.o.b. mills, sir.

Q. Now, let's go back to this exhibit.

Mr. Leisure: Mr. Wooden, are you going to offer that abstract the Admiral was reading from saying from whom the bids were received?

Mr. Wooden: You mean to whom they were sent?

Mr. Leisure: I mean the official record—

Mr. Wooden: No, I didn't intend to. It is available.

Mr. Leisure: Are you finished with it?

Mr. Wooden: Yes. You have no objection, have you, Admiral?

The Witness: It is all right, yes, sure.

Mr. Wooden: It was brought here for any public use that could be made of it (handing a paper to Mr. Leisure).

By Mr. Wooden:

Q. Referring now, Admiral, to the Commission's Exhibit 1339, being the proposal of March 30, 1938, will you state what manufacturers of cement made no response at all to that proposal?

10016 A. Yes, sir. I have here a list of the manufacturers who ignored the invitation.

By Mr. Wooden:

Q. Will you—

A. It is very lengthy.

10017 Q. Will you read that into the record?

A. Read it into the record?

10020 The Witness: There is a long list of manufacturers who ignored the invitation.

Mr. Wooden: Any way that is done, the Admiral may have other material so tied up with it that he can hardly separate it. I don't know that.

The Witness: I can do that, sir.

10021 Mr. Leisure: Wouldn't it be simpler to mark it for the Admiral, and then let it be offered as an exhibit instead of asking him to read?

Trial Examiner Norwood: No, I think this is simpler. You may see it, if you want to.

Mr. Wooden: It is just a list made up from the

10022 official records, as I understand, that he is willing to vouch for.

The Witness: Exactly.

Mr. Leisure: The other list has been marked. I don't know exactly why we are using this method now.

10023 Trial Examiner Norwood: On the record.

A. Yes, sir; I have here a list of those manufacturers who ignored the invitation.

Trial Examiner Norwood: Go ahead and read them.

A. The Alpha Portland Cement Company, the American Portland Cement Company, the Arkansas Portland Cement Company, the Ash Grove Lime & Portland Cement Company, the Beaver Portland Cement Company, the Bessemer Lime & Cement Company, the Carney Company, the Castalia Portland Cement Company, Colorado Portland Cement Company, Consolidated Cement Corporation, Coplay Cement Manufacturing Company, Cowell Portland Cement Company, Cumberland Portland Cement Company, Dewey Portland Cement Company, Diamond Portland Cement Company, Edison Portland Cement Company, Federal Portland Cement Company, Florida Portland Cement Company, Ford Motor Company, Fort Scott Hydraulic Cement Company, Fowler & Pay, Georgia Cement & Products Company, Giant Portland Cement Company, Glens Falls Portland Cement Company, Great Lakes Portland Cement Corporation, Green Bag Cement Company of Pennsylvania, Green Bag Cement Company of West Virginia, Gulf Portland Cement Company, Hawkeye Portland Cement Company, Hercules Cement Corporation, Hermitage Portland Cement Company, Inc., Idaho Portland Cement Company, Ideal Cement Company, International Cement Corporation, Lone Star Cement Company of Alabama, Lone Star Cement Company of Indiana, Inc., Lone Star Cement Company of Kansas,

10024 Lone Star Cement Company of Louisiana, Lone Star Cement Company, New York, Inc., Lone Star Cement Company of Pennsylvania, Lone Star Cement Company of Texas, Lone Star Cement Company of Virginia, Keystone Portland Cement Company, Lawrence Portland Cement Company, Longhorn Portland Cement Company, Louisville Cement Company of New York, Inc., Medusa Portland Cement Company, Missouri Portland Cement Company, Monarch Cement Company, National Cement Company, National Portland Cement Company, Nebraska Cement Company Oklahoma Portland Cement Company, Oregon Portland Cement Company, Pacific Coast Cement Company, Peerless Cement Corporation, Penna-Dixie Cement Corporation, Pittsburgh Plate Glass Company, Portland Cement Company of Utah, Republic Portland Cement Company, San Antonio Portland Cement Company, Santa Cruz Portland Cement Company, Signal Mountain Portland Cement Company, A. J. Snyder Lime-

stone & Cement Company, South Dakota Cement Plant, Standard Lime & Stone Company, Standard Portland Cement Company, Superior Cement Corporation, Three Forks Portland Cement Company, Trinity Portland Cement Company, Union Portland Cement, United States Portland Cement Company, Valley Forge Cement Company, Volunteer Portland Cement Company, Vulcanize Portland Cement Company, Wabash Portland Cement Company, Washington-Idaho Lime Products Company, Western Portland Cement Company, White Hall Cement Manufacturing Company, Wolverene Portland Ce-
10025 ment Company, Yosemite Portland Cement Company.

Then I have a list of the firms who did bid.

Q. Do you also have a list of manufacturers or concerns who submitted no bids, but gave some reasons for not bidding?

A. Yes, sir.

Q. Will you name those?

A. The Ash Grove Lime & Portland Cement Company, Lehigh Portland Cement Company, Lone Star Cement Corporation, Nazareth Cement Company, North American Cement Corporation, Universal Atlas Cement Company, West Penn Cement Company.

Q. Do you have a list of the manufacturers who complied in all respects with the invitation in submitting bids?

A. Yes, sir.

Allentown Portland Cement Company, Blue Diamond Corporation, Ltd., Henry Cowell Lime & Cement Company, Edison Cement Corporation, Huron Portland Cement Company, Kosmos Portland Cement Company, Louisville Cement Company, Monolith Portland Cement Company, Monolith Portland Midwest Company, Northwestern State Portland Cement Company, Northwestern Portland Cement Company, The Olympic Portland Cement Company, Ltd., Petosky Portland Cement Company, Southwestern Portland Cement Company, Los Angeles, California, office, Superior Portland Cement Company, Inc., Spokane Portland Cement Company.

10026 Q. Did your proposal of March 30, Commission's Exhibit 1339, give any information to the parties to whom it was sent as to the approximate amount of the government's requirements during any period of time?

Mr. Zimmerman: Let me interrupt a moment, please. Do you consider that he had read all of the responses?

I do not recall having heard anything about the Marquette Cement Manufacturing Company.

Mr. Wooden: I noted that before he ever went on the stand. This is the list as he has it.

Mr. Leisure: You mean he doesn't know what response Marquette made?

The Witness: I do, sir.

Mr. Zimmerman: Sir?

The Witness: That of the 24 bids received the following 8 companies so qualified their quotations as to make them inaccessible under the terms of the proposal.

Mr. Wooden: "Inaccessible" or "inacceptable"?

The Witness: Inacceptable.

Mr. Zimmerman: This being another classification, I take it.

The Witness: No part of the same list, but they were so qualified or modified—

Mr. Zimmerman: Which list, Admiral?

The Witness: The first list was the list of the
10027 companies who complied in all of the respects with the invitations to bid.

Mr. Zimmerman: Yes.

The Witness: Then there were, in addition to that?

Mr. Wooden: That is the last list you read?

The Witness: Yes. In addition to that of the 24 bids received, the following 8 companies so qualified their quotations as to make them inacceptable under the terms of the proposal: The Aetna Portland Cement Company of Bay City, Michigan; they excluded shipments into the adjoining states of Minnesota and Wisconsin.

Mr. Zimmerman: Just a moment, please.

I object to him saying what they did that made them inacceptable.

I think the response itself, which is the thing which was in writing, should be in evidence because certainly—the Admiral will correct me if I misstate that—all these things were in writing, weren't they, the responses?

The Witness: Yes.

Mr. Zimmerman: Therefore, they should be produced and we can see from the writings themselves what the con-
tents were. They ought not to be characterized by
10028 the witness.

Mr. Wooden: The Admiral is testifying to the effect that the action of his department under his supervision was to reject those bids and because they were inacceptable under the terms of the proposal, as I understand it.

Mr. Zimmerman: That is true and he is, I take it, giving the reason you assign to that.

Trial Examiner Norwood: He is giving testimony as to the things that were in these documents that rendered them inacceptable.

Mr. Zimmerman: If the documents themselves are produced, I will have no objection to him pointing out the reasons why they considered them inacceptable and I take it the documents will be produced.

Mr. Wooden: I hadn't intended to do so.

If the Admiral has them here I have no objection to their being looked at.

Mr. Zimmerman: I don't think you have any right—

Trial Examiner Norwood: We have so many of these bids in for study he can give us some general information here about those things.

I see no reason why he shouldn't do it.

Mr. Zimmerman: May I point out a reason, then, sir?

The reason is this: Whenever a witness undertakes
10029 to express an opinion considering the character of a written document, it is always the right of Counsel representing either side to insist upon the document itself being present.

Trial Examiner Norwood: That is true.

Mr. Zimmerman: (Continuing) Being present and open for their inspection so that they may then say to the witness: "Now, we have a right to cross examine you on that and ask you concerning this and that or the other part of the contents of that you point out—"

Trial Examiner Norwood: Counsel's point is well taken on that.

Mr. Wooden: I have no objection.

Trial Examiner Norwood: I will instruct the witness to leave out the reasons there.

You can strike the statement he made with regard to Aetna.

Mr. Zimmerman: Perhaps we ought to read the answer.

The Reporter: (Reading) "A. In addition to that of the 24 bids received, the following 8 companies so qualified

their quotations as to make them inacceptable under the terms of the proposal: The Aetna Portland Cement Company of Bay City, Michigan, they excluded ship-
10030 ments into the adjoining states of Minnesota and Wisconsin."

Trial Examiner Norwood: Strike everything after that "excluded the shipments" there—

Mr. Zimmerman: That wouldn't cure the defect at all, because he said they so qualified their bids as to make them inacceptable.

10031 Trial Examiner Norwood: I didn't understand Counsel to object to that part of it. I thought you objected to the reasons.

Mr. Zimmerman: I object to the whole qualification. It is a comment upon the content of the written document. It is not I have an objection to the Admiral's opinion, but we do have a right to have the written document present so that we may ask him about it and see it and say, "Admiral, wouldn't this or that or other thing affect the"—

Mr. Wooden: It is obvious that the bringing of the document in here would not disclose whether they are acceptable or not.

Mr. Zimmerman: The Admiral can only act in accordance with the—

Trial Examiner Norwood: Just a moment.

The Witness: I am trying to state the fact, not the opinion.

Trial Examiner Norwood: Involved in his answer was, necessarily, a statement of the content of these documents.

Mr. Zimmerman: That is right.

Mr. Wooden: I don't think it is. He has so far merely stated that eight concerns so qualified their bids that they were inacceptable under the terms of the pro-
10032 posal.

Mr. Zimmerman: The very term "so qualified"—

Mr. Wooden: That is all right. If you want to go into that on cross-examination or find out wherein they were qualified, notwithstanding his statement that they were qualified, there is no objection.

Mr. Zimmerman: But the document must be here.

Mr. Wooden: I do not believe it is necessary for us to produce those documents.

Mr. Zimmerman: How in the world would we get them if the witness didn't produce them? They are in your possession, are they not?

The Witness: Yes.

Mr. Zimmerman: The witness says they are. How could we get them?

The Witness: They are part of the official record of the office.

Mr. Zimmerman: I think it is perfectly simple to bring them in here.

Mr. Wooden: I have no objection to that, but I suggest that the question as put and answered is competent, to give that list of eight concerns.

Trial Examiner Norwood: There is no objection made at the time to that statement.

Mr. Zimmerman: I disagree. Counsel is raising it
10033 now.

It may be I am taking too much time. Possibly Mr. Leisure would like to have something to say about this. I don't want to take all the time here, but it does seem to me that the first thing you should do where the best evidence obtainable is apparent that it is a writing, then it ought to be brought in.

Trial Examiner Norwood: I think Counsel is correct about it, and if they insist on it you will have to get them—

Mr. Wooden: Do the Respondents have duplicates of those recent bids available to them just as readily as they might be from the official records?

Mr. Zimmerman: You know perfectly well I can't go to these companies and say, "Will you please give me a copy of the bid or letter"; whatever it was. You would be the first one, Mr. Wooden, to say, "That is a terrible thing for your competitors to do, to give you their confidential information," and it wouldn't be practical. You have a witness who says he has them in his possession; he is testifying concerning the contents of them and why do you stand in the way of the orderly procedure usually followed?

Mr. Wooden: I have stated before and I state again I do not object to it, but I feel it is a useless waste of
10034 time.

Trial Examiner Norwood: If they insist on bringing them in, I have no choice.

Mr. MacIntyre: We fully agree that the Counsel's point is well taken if it goes to any testimony by this witness as to the contents of those documents, but it is the contention of the Government's Counsel here that the testimony

of this witness has not touched the contents of the documents, but, instead, concerns the use of his discretion in his official position in determining whether or not that documents or bids submitted met proposals which he had sent out.

That is a matter of his discretion for the purpose of determining whether or not they met the proposals sent out under the statutes, that he had to use his discretion at that time.

Mr. Zimmerman: May I suggest that the Admiral and his Department don't operate on the use of discretion at all. Their duty under the law is to let a contract to the lowest bidder based upon certain provisions.

Am I right about that, or am I not?

The Witness: That is true.

Mr. Zimmerman: It is not a matter of wild discretion, uncontrolled, at all.

Trial Examiner Norwood: Do you object to the
10035 question, Mr. Zimmerman?

Mr. Zimmerman: I do, because he says he is called for a comment upon the contents and the purport of written documents.

Trial Examiner Norwood: Yes.

Mr. Zimmerman: The proper thing is to produce those documents. They are the best evidence, and where it is perfectly plain that the witness on the stand has those things in his possession, that is the way to proceed.

Mr. Wooden: But those documents are not evidence of the official action taken by his department, which is all I am interested in at this time.

Mr. Zimmerman: I have no objection to his stating what the official action was.

Trial Examiner Norwood: Yes. He can state there were five or seven, or whatever it is, that were—

Mr. Zimmerman: Rejected.

Trial Examiner Norwood: —rejected. The minute he begins to go into the cause of it, just that minute does he begin to comment upon the contents of those instruments and the effect and purport of them.

Mr. Wooden: Do you want to take issue with that proposition, that the bids were in accordance with the specifications to show at any time—

10036 Mr. Zimmerman: I don't know anything about what they contained. All I know it that you asked

this witness to characterize it, and to express an opinion upon them and say that "We took action, certain action upon them because."

Mr. Wooden: That is all right. That was the reason.

Mr. Zimmerman: Well, then, let them be produced.

Mr. Wooden: You can dispute it.

Mr. Zimmerman: It isn't a question of dispute. It is just the question of the A, B, C's of ordinary procedure.

Trial Examiner Norwood: Now, I am going to overrule the objection, so far as that answer goes, so far as it gives general information regarding their objection to those bids.

Mr. Zimmerman: Yes, sir.

Trial Examiner Norwood: And I am going to sustain Counsel in his position that the witness should not be permitted to give those causes or to state the particulars as to the contents of the bids, so we can strike the mat-
10037 ter that I designated a few moments ago, and I will instruct the witness to complete his answer giving the list of the manufacturers who submitted bids with such qualifications in them as caused them to be rejected.

Mr. Zimmerman: And you will instruct the witness to produce the writings themselves?

Trial Examiner Norwood: Yes, I will.

Mr. Zimmerman: And, I take it, tomorrow morning is plenty of time.

Trial Examiner Norwood: Yes.

Mr. Wooden: Your Honor, I don't see why, as part of the case that I am putting in, at any rate, that that need be done or should be done. If they want it as part of their case to dispute the Admiral's statement, why, it seems to me that may be done as a part of their case rather than as a part or by way of cross-examination.

Trial Examiner Norwood: I think that these bids can be made available to the Respondents if you are giving this general information regarding them, and the bids should be available to the Respondents, and I will request the Admiral to make these bids available to the Respondent.

Mr. Hershberger: That means not only the bids but the replies, I take it?

10038 Trial Examiner Norwood: And the replies that are referred to in these questions and answers, yes.

Mr. Wooden: Well, I think what Mr. Hershberger is referring to are the companies who did not bid but gave explanations.

Mr. Hershberger: That is exactly what I am referring to.

Mr. Zimmerman: That is right, whatever response is made to the application.

Trial Examiner Norwood: Fine.

Finish your list, Admiral.

The Witness: The Aetna Portland Cement Company, Bay City, Mich.; Calaveras Cement Company, St. Andrews, Calif.; California Portland Cement Company, Colton, Calif.; Pacific Portland Cement Company, Redwood Harbor, Calif.; Riverside Cement Company, Fresno, Calif.; Southern State Portland Cement Company, Rockmart, Ga.; Southwestern Portland Cement Company, El Paso, Texas; Marquette Cement Manufacturing Company, La Salle, Ill.

By Mr. Wooden:

Q. Is that all of them, Admiral? Is that all of the list?

A. That is the 24; yes, sir.

10040 Q. Admiral, how much cement would you say you purchased under contracts based on the proposal of March 30, Commission's Exhibit 1339, I believe?

10041 A. Do I understand, sir, the question is how much cement was purchased under the proposal?

Q. That is right.

A. Commission's Exhibit 1339?

Q. That is right.

A. The proposal form stated that this contract will be the sole source of supply to Government's activities during the contract period for cement of quality covered by specifications herein mentioned except for requirements covered by existing contracts; as bids were to be quoted f.o.b. mill only, and as the bids received did not adequately cover the country at favorable prices, no contracts were awarded and all bids received in response to the proposal issued on March 30 and opened on April 15 were rejected.

Mr. Leisure: Now, is that answer responsive to the question? I understand the question to be: How much cement was purchased, and the answer was that there was none. Now, the Admiral has read something from some paper.

What is it you have read from?

The Witness: I read from the proposal itself.

Mr. Leisure: That which you have just finished reading?

The Witness: Well, I mean, it is a notation from a proposal here (indicating).

10042 Mr. Wooden: Commission's Exhibit 1339.

Trial Examiner Norwood: Yes.

Mr. Hershberger: No, it couldn't be.

Mr. Leisure: You mean the proposal contains the reasons for not accepting,—for not purchasing any cement, Admiral?

The Witness: It states the condition of the bidding.

(The witness examines papers.)

A. I am trying to locate that provision, sir. It is here (referring to Commission's Exhibit 1339). There is a great mass of detail all the way through here, gentlemen, I do not want to—

Oh, here it is right here, sir. It is in the second sentence on page 6 of this document No. 1339 (witness refers to Commission's Exhibit 1339, which says: "This contract will be the sole source of supply to government activities during the contract period for cement of quality covered by the specifications herein mentioned, except for requirements covered by existing contracts."

That is just what I quoted, sir, and as no bids were received under the response for bids, which covered the whole country, why, of course, they were not satisfactory and had to be rejected.

10046 By Mr. Wooden:

Q. Admiral, do you mean to say by your answer to my last question that the efforts of the Federal Government to buy cement f.o.b. mill were a failure?

Mr. Leisure: I object to that question. It is immaterial, incompetent, and irrelevant, asks for the conclusions of this witness on matters that he is not prepared to testify on.

10047 Mr. Zimmerman: That would precipitate things, believe me.

Trial Examiner Norwood: I think that is asking for factual matter.

Mr. Zimmerman: Oh, no, that is asking for a conclusion of the witness.

Mr. Wooden: Here is the witness—

Mr. Zimmerman: A conclusion of the witness.

Trial Examiner Norwood: You may bring out the details and the results of his efforts, the factual details.

Mr. Zimmerman: We are going to do it when they produce the documents.

Mr. Wooden: I want to find out to what extent they were a failure and to what extent a success.

Mr. Zimmerman: That is asking the witness to characterize his point of view and his satisfaction or dissatisfaction with the experiment that they made.

Trial Examiner Norwood: No, I do not think so. He is asking whether or not they succeeded in getting these bids, and, if so, how many.

Mr. Zimmerman: No, he has not asked him that at all. He says, "Was it a failure?"

Mr. Wooden: To what extent?

Mr. Zimmerman: That does not say "How many?"

10048 By Mr. Wooden:

Q. To what extent were f.o.b. mill bids a failure and to what extent a success?

Trial Examiner Norwood: The objection is overruled; answer that factually.

A. The net result was a failure to get satisfactory bids.

Mr. Leisure: Now, I move to strike out the answer on the ground that the bids, themselves, are the best evidence, and to call this witness here and have him state what was a failure and what was not a failure is utterly improper.

Trial Examiner Norwood: The motion is allowed.

You can state how many you received, and you can compare them with those you received heretofore and give us the factual answer to that question, and not simply the general characterization that it was a failure.

Mr. Wooden: Your Honor, the witness is thoroughly competent to state the answer to that question, and I submit that the question itself is competent, and because the witness has a background of experience in handling these matters.

Mr. Zimmerman: The first time he ever had an invitation of this kind.

Mr. Wooden: That is all right, but of purchasing generally and on that basis.

10049 Mr. Zimmerman: Never made any attempt to purchase on such basis before; he says so.

Mr. Wooden: In cement, he says; but in others he has had experience.

Trial Examiner Norwood: Counsel can easily bring out the facts here instead of covering it with one general conclusion, I think.

Mr. Wooden: Your Honor, I do not object provided the statement remains physically in the record.

Trial Examiner Norwood: Well, it is there anyway.

Mr. Wooden: If it remains physically in the record, I won't make any objection.

Major Burgess: Your Honor, I would like to ask a question on that immediate question, in view of the answer of the witness that it was the net—that the net result was a failure. Among the Respondents the witness enumerated those who did bid in accordance with it—qualified—including the Southwestern Portland Cement Company at Los Angeles, Calif., and I would like to ask how that, then, was a failure to comply.

Examination on Voir Dire.

By Major Burgess:

Q. Admiral, am I not correct in stating that you stated that the Southwestern Portland Cement Company at Los Angeles—

A. The bid was a failure because of the condi-
10050 tions in the bidding, which I quoted—that is, that there was to be one contract for one source of supply. No, if the bid was—in any of these 16 firms—it would have meant that excessive long freight hauls were involved, from firms in Southern California up into Colorado, or from a firm in Atlanta, Ga., up into Maine, because no satisfactory bids came in from the Maine people.

Q. Well, Admiral, did not the bids call for—the bidding on cement by districts?

A. They called for it by zones; yes, sir.

Q. By zones?

A. Yes, sir.

Q. Well, now, in the zone in which the Southwestern Cement Company at Los Angeles was situated, it did bid in strict compliance with the Government's call, as I understood your answer?

Mr. Wooden: This is cross examination that point.

Trial Examiner Norwood: Yes.

Mr. Zimmerman: Well—

Major Burgess: Well, I was not going to be here—well, I will be here tomorrow—

Trial Examiner Norwood: Yes.

Major Burgess: —but the Admiral will not be here tomorrow, and this was the only opportunity I had.

10051 Trial Examiner Norwood: Yes.

A. On that particular point, sir, I could say that immediately following this opening there were other proposals issued for Southern California where bids were received f.o.b. mills which we regarded as competitive bids, and the awards were made accordingly.

By Major Burgess:

Q. But, so far as the bid of that particular Respondent is concerned, as you first stated, it was in full compliance with the Government's request?

A. In compliance—

Q. But not—

A. But not regarded as satisfactory.

Q. You did regard it as satisfactory?

A. We did not, no.

10052 Q. That bid?

A. No, we did not.

Q. Well, now, may I ask why that bid was not, if it was in strict compliance with the Government's request?

A. Because—

Q. How was that bid unsatisfactory?

A. Because the additions of freight rates from the mill concerned, to other districts, where no f.o.b. mill price had been received, would have made the cost excessive.

Mr. Zimmerman: You mean the cost at the destination?

The Witness: Yes, the cost at the destination, certainly.

By Major Burgess:

Q. But you were calling on it for a cost solely at—

A. (Interposing) Gentlemen, frankly, the bid in that particular case, the bid may have been a reasonable bid—

Mr. Wooden: Well, to get back to the main track again.

Trial Examiner Norwood: Yes.

A. (Resuming) You see, there were 67 zones that were covered—

Mr. Wooden: I don't know.

A. (Resuming) —that had been advertised for, and out of the 67 there were only bids received by 30—

10053 wait a minute—(witness refers to paper), it is important to get that figure in there.

Mr. Wooden: I would like to proceed with further questions.

Trial Examiner Norwood: Go ahead.

Major Burgess: There were one or two further questions that I would like to ask, if I could, to get the situation as far as that bid was concerned.

Trial Examiner Norwood: With the permission of Commission's Counsel only.

Mr. Wooden: Well, I am not disposed to oppose it.

Major Burgess: Not disposed?

Mr. Wooden: I am not disposed to oppose it.

Trial Examiner Norwood: Mr. Wooden is conducting his direct examination.

Mr. Wooden: As I say, I am not disposed to oppose it, so it is understood it is cross examination, that is all.

Trial Examiner Norwood: I think we will have to be a little more formal in the conduct of this hearing. We are getting so that we are wasting a whole lot of time making suggestions to each other about questions and so on.

10054 Trial Examiner Norwood: On the record.

Major Burgess: Well, my examination would be brief.

Trial Examiner Norwood: I think that Commission's Counsel has agreed that you may go ahead.

Mr. Wooden: Well, now—

Major Burgess: The Admiral was about to give some—

The Witness: Yes, of the 63 zones that were advertised for, there were no bids received from 37 of those zones and under the conditions quoted that that contracts awarded would have been the sole source of supply, in those zones where no bids were received the freight rates added to them would have increased costs of freight—of cement—over which possibly that it could be bought for locally.

By Major Burgess:

Q. As far as—

A. With the schedule regarded as a whole there were no specified quantities other than approximately three million barrels of cement.

Q. Am I correct in this: In the zone in which that company was situated there was a call by the government for bids f.o.b. mill, in response to which the Southwestern Portland Cement Company at Los Angeles made a bid in
10055 full compliance with the request?

A. I want to be sure, now, to see whether the name of the company—

Q. Well, you named it as one of them, and I am sure that is the fact, Southwestern Portland Cement Company, Los Angeles office.

A. Could I see that big document, tabulated statement?

Mr. Wooden: Commission's Exhibit 1339?

The Witness: No. No. No.

Mr. Wooden: March 30?

The Witness: No.

Mr. Leisure: The abstract (handing a paper to the witness).

The Witness: Mr. Landick, have you that record here of the Southwestern?

By Major Burgess:

Q. You read a list. Off the record, please. You read a list?

A. That is on the first opening, yes, sir, I did.

Mr. Landick: Any objection to my showing—

The Witness: And there in that list—

Mr. Landick: No objection to showing the Admiral?

Trial Examiner Norwood: No.

Mr. Landick: (Indicating.) Southwestern Port-
10056 land Cement.

The Witness: Southwestern Portland Cement Company. I read that off, yes, sir, because they complied with the specifications in so far as the bidding is concerned.

By Mr. Burgess:

Q. Well, that is all they were called upon to do, wasn't it? They were not called upon to—

A. That is all right, but the question of reasonableness in prices came into it.

Q. Within that zone?

A. Yes, and all of them, and also—

Mr. Zimmerman: What do you mean by "reasonableness of price"?

The Witness: Well, the prices plus the freight rates, the ultimate point of delivery were regarded as excessive and the right reserved by the government always to reject any or all bids. That right was taken.

10058 Washington, D. C.,
November 2, 1938.

10062 JULIEN EYSMANS was thereupon recalled as a witness for the Commission, and, having been
10063 previously sworn, testified further as follows:

Q. Mr. Eysmans, I am handing you a document which has been marked for identification as Commission's Exhibit 1342, and ask you to state what you know about that?

A. Now, I suppose the way to answer that would be direct. I recall having received the communication.

Q. If you so recollect—

A. Yes.

10064 Q.— —having received it, we will be glad for you to state so, and, if so, state from whom, if you can.

Mr. Leisure: Well, the exhibit itself will indicate that, Your Honor. Unless Mr. Eysmans was present and saw the man write it, he cannot tell us from whom he received it. I think the exhibit may speak for itself.

Trial Examiner Norwood: He can say he received it.

Mr. Leisure: He is now being asked from whom he received it.

Mr. MacIntyre: If he knows.

A. From whom I received it? No. Just what channels it passed on through I couldn't tell. There would be a number of ways of it reaching me, but I recognize it.

By Mr. MacIntyre:

Q. As a document you received?

A. Yes, sir.

10065 Q. In your capacity as an official of the Pennsylvania Railroad?

A. (Witness nods head affirmatively.)

10066 Trial Examiner Norwood: Do you know who these parties are, Mr. Shoettler and Mr. Cooke?

The Witness: Do I, sir?

Trial Examiner Norwood: Yes, sir.

The Witness: Yes, sir. Mr. Cooke was either assistant general freight agent, or general freight agent at Chicago of the Western region of the Pennsylvania Railroad, and Shoettler was one of our street men, representatives, in Cincinnati; and he reported to Chicago, and then Chicago reported direct to the Philadelphia office. But, of course, it could go from Cooke to a superior officer, to me, so that I don't know what channel it would pass down into
10067 our office.

Direct Examination (Continued) by Mr. MacIntyre

By Mr. MacIntyre:

Q. Mr. Eysmans, I now show you a document marked for identification as Commission's Exhibit 1343, and ask you to state if you recognize that and also to state what you know about it?

A. Yes, sir; I received this communication.

Q. From whom, if you can state?

Mr. Leisure: Now, I again submit that the witness is not able to state from whom he received it, unless he was physically present and it was handed to him. The letter may speak for itself as to the author of the letter, but beyond that this witness cannot answer, and I object to the question.

Trial Examiner Norwood: He can state, if he knows it. The objection is overruled.

A. Well, the letter is addressed by Mr. Campbell, the president of the National Builders Supply Company, to me, and as it reached me, it came through the United States mail. I can definitely state that I did receive it, because this is my writing on here passing it up to one of our vice-presidents.

By Mr. MacIntyre:

Q. Thank you.

10068 Mr. MacIntyre: We now offer this in evidence, Your Honor, as one of the letters that relates to that group of trucking letters which were previously admitted under exhibit number 1043 (handing the exhibit referred to Mr. Leisure).

10070 (COM. EX. 1343 was offered and received in evidence.)

10071 Q. Mr. Eysmans, I show you a document marked "Commission's Exhibit 1344," and ask you to state whether you recognize that, and, if so, tell us what you know about it.

10072 A. I recognize the telegram having been received by me.

Q. Can you state from whom?

Mr. Leisure: I object to the question, Your Honor. The witness is not capable of stating from whom he received that—unless Mr. MacIntyre wants to know if he received it from a telegraph boy. He cannot possibly state of his own knowledge who sent the telegram unless he was physically present when the telegram was sent.

It is merely an attempt to try to prove by testimony from this witness a signature to a document, and I do not think this witness should be led into that kind of testimony.

Trial Examiner Norwood: I think this witness knows, from subsequent conversations with the sender, or from any other circumstance that he might be able to testify that he knows where it came from.

Mr. Leisure: He might be, and if those preliminary questions which are necessary to such a final question are asked, I shall not make any objection, but until they are I press my objection.

Trial Examiner Norwood: The objection is overruled.

A. I have answered that, have I not? Mr. Camp-
10073 bell—W. W. Campbell.

By Mr. MacIntyre:

Q. And you received it in due course of business?

A. Yes, sir.

Q. From the telegraph office?

A. Yes, sir.

Q. They transmitted it?

A. (Witness nods head affirmatively.)

Mr. MacIntyre: Your Honor please, I would like to call your attention to the fact that the document marked for identification as Commission's Exhibit 1344 is, or appears to be, the original of a document which has been admitted heretofore as Commission's Exhibit 1043-5B.

We now offer Commission's Exhibit 1344 in evidence to replace Commission's Exhibit 1043-5B.

10077 (COM. EX. 1344 was offered and received in evidence.)

Q. Mr. Eysmans, I now show you a document which has been marked for identification "Commission's
10078 Exhibit 1345" (showing paper to witness), and ask you to state whether you recognize that, and, if so, what you can say about it?

A. I recognize this as a telegram having been sent by me to Mr. W. W. Campbell.

Q. You mean the original or as a copy of a telegram you sent him?

A. I recognize this as the carbon copy—I think I said—what's what this is, a carbon copy of a telegram.

Q. Of a telegram that you sent to him?

A. Yes, sir.

Mr. MacIntyre: Your Honor please, I want to call your attention to the fact that the document marked for identification 1345 is a copy of document which has heretofore been received as Commission's Exhibit 1043-5A.

We now offer Commission's Exhibit 1345 in the record.

10079 Mr. Leisure: In addition to the objection we have heretofore stated, I want to object to this needless encumbering the record in this way of offering exhibits twice. As Mr. Zimmerman pointed out, these exhibits have all been admitted in evidence, and now we are going over the record again and offering other copies and other exhibits of the same ones that have been admitted.

I make that objection in addition to the other objection we have heretofore stated.

Mr. Wooden: They were not admitted without qualification and we are trying to comply with that qualification now.

Trial Examiner Norwood: I can't say these copies, coming from different places and the identification of this witness, doesn't add something.

Mr. Leisure: If it is additional identification, he can take the exhibit which is in evidence and testify to anything that he has to say concerning the exhibit. This record will have to be printed.

I object to having two exhibits of the same document in evidence.

Mr. MacIntyre: We cannot understand how Mr. Leisure can insist on the technicalities of his proving by each and every party to a piece of correspondence that it was writ-

ten, that it was sent, that it was received, and by
10080 whom it was transmitted without also accepting some of the burden that must be entailed in such a method of technical proof that he has insisted upon heretofore.

Trial Examiner Norwood: Some of these individual copies have office marks, too, that distinguish them from the ones that have been received heretofore.

(COM. EX. 1345 was offered and received in evidence.)

Q. Mr. Eysmans, I am showing you documents which have been marked for identification "Commission's Exhibits 1346-A and 1346-B." I ask you to state whether you recognize them and also to state what you know about them?

A. I recognize having received both of these documents. I can't swear that they were attached at the same time.

10081 Q. They were received by you through the mail in the ordinary course?

A. Through the mail; yes, sir.

Q. And received by you in your capacity as an official of the Pennsylvania Railroad?

A. Yes, sir.

Mr. MacIntyre: I want to call attention to the fact that the documents marked as Commission's Exhibits 1346-A and 1346-B are the originals of which Commission's Exhibits 1043-4Y and 1043-4Z are copies. We therefore at this time offer in the record Commission's Exhibit 1346-A and 1346-B, for identification.

10083 Mr. Leisure: Your Honor, since this is a communication between third parties, it seems to me there should be some offer of proof as to how Counsel believe that these documents are material in this case.

Trial Examiner Norwood: We have been all over that, and the record has considerable on the subject.

Mr. MacIntyre: The record is replete with testimony and exhibits showing who Mr. Holway is, that he attended the meetings with Cement manufacturers and railway officials in New York and Philadelphia as a representative of the National Builders Supply Association, and Mr. Leisure is well aware of that fact.

Mr. Leisure: But there is no charge in the complaint that the railroads and the dealers conspired together in one gigantic conspiracy. There is no such charge.

10084 (COM. EX. 1346-A and 1346-B was offered and received in evidence.)

Q. Mr. Eysmans, I am showing you a document marked for identification as Commission's Exhibit No. 1347, and ask you to state whether you recognize it, and, if so, what you know about it.

A. I recognize having received this letter.

Q. In the due course of mail?

10085 A. In the due course of mail. This is my identification mark (indicating).

Q. In the upper left hand corner?

A. Yes, sir, in pencil.

Mr. MacIntyre: I want to call attention to the fact that this is an original of an exhibit which has been heretofore admitted as Commission's Exhibit 1043-4G.

We now offer this Commission's Exhibit 1347 in evidence.

10089 *Examination on Voir Dire*

By Mr. Leisure.

Q. I notice, Mr. Eysmans, some writing following "November 25th" (referring to paper); do you know whose writing that is?

Mr. Zimmerman: Oh, if that is what you wanted to know, why didn't you say so.

A. I think it is the file clerk's,—Mr. Pomeroy probably could identify that writing. This is my initial (indicating) and when that line is struck through there that meant it was to go to file.

10091 (COM. EX. 1347 was offered and received in evidence.)

The witness identified Com. Ex. 1348 A and 1348 B as a communication from Mr. Holway through the

10092 United States mail. The witness failed to recognize any handwriting or other markings on the document as being in his own handwriting or in the handwriting of anyone in the office of the witness.

Mr. MacIntyre: I now refer to the record, Commission's Exhibit 1043-4F which is a document all on one page and of which this is the two page original, this document marked for identification Commission's Exhibit 1348-A and 1348-B.

We now offer 1348-A and 1348-B in the record.

(COM. EX. 1348-A and 1348-B was offered and received in evidence.).

10093 The witness identified Com. Ex. 1349 as a letter received from Mr. Campbell in due course of mail.

10094 (COM. EX. 1349 was offered and received in evidence.)

10096 By Mr. MacIntyre:

Q. Mr. Eysmans, I now show you a document which has been marked for identification as Commission's Exhibit 1350, and ask you to state whether you recognize that, and, if so, what you know about it?

A. What I know about it? Did you ask—

Q. That is, what the facts are, if you recognize it as something that you have seen before, and, if so, what are the facts upon which you base the recognition?

A. I recognize this as a copy of a letter that I wrote to Mr. Campbell on November 12th, and the footnote is initialed "E. L.," and is vice-president Elisha Lee, who attended the meeting in the Commodore Hotel in July of 1931. I notice there is an error in writing to Mr. Lee, which states that the meeting was held at the Biltmore Hotel. That was wrong. It was the Commodore Hotel.

I would like to say that the second paragraph of that letter was written to Mr. Campbell in appreciation for what he called educational work that he was doing in trying to restore traffic to the railroads that had been moving by trucks.

Q. Are there any handwriting notes on there, initials, or otherwise, that you recognize?

A. Yes, this one was initialed evidently by Mr. Lee's office to various other officers.

10097 Q. Of the Pennsylvania Railroad?

A. Of the Pennsylvania Railroad.

Q. That would comprehend the initials throughout the top of the page of the letter, wouldn't it?

A. Yes, sir.

Mr. MacIntyre: If Your Honor please, we offer that in evidence, that is, Commission's Exhibit 1350, and call attention to the fact that it is a document of which Commission's Exhibit 1043-4B is a copy.

(Commission's Exhibit 1350, for identification, was handed to Respondents' Counsel.)

Mr. MacIntyre: Mark this with the next number, and follow through with these.

(A document purporting to be a letter to the witness from W. W. Campbell, under date of November 11, 1931, was marked for identification as Commission's Exhibit 1351.)

Trial Examiner Norwood: Any objection to Commission's Exhibit 1350?

Mr. Leisure: Yes, Your Honor. We make the same objections that we made before. This is a letter from Mr. Eysmans to Mr. Campbell, and then there is a note by Mr. Eysmans to—who did you say "E. L." was?

The Witness: Elisha Lee.

Mr. Leisure: And who was Mr. Elisha Lee?

10098 The Witness: Vice-President.

Mr. Leisure: Of the Pennsylvania Railroad?

The Witness: Of the Pennsylvania Railroad.

Mr. Leisure: The memorandum would clearly be an inter-office memorandum that could not be binding on us, unless Mr. Eysmans is considered as a conspirator, and I am sure that he would assure us that he is not a conspirator, so there is no basis for the letter to Mr. Campbell or Mr. Elisha Lee. There is no basis for the letter whatever.

Trial Examiner Norwood: Any further objection?

The Witness: Well, is it proper for me to say that the Counsel is correct that we are not conspirators?

Trial Examiner Norwood: Why, certainly.

Mr. Zimmerman: It wouldn't look like we would need any proof of that, if he admits it.

Trial Examiner Norwood: That might be a legal conclusion which would be inadmissible if objected to.

The Witness: Well, off the record. I hope when you write this report—

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: We will have a five-minute recess, during which time Counsel may discuss a stipulation.

10100 (COM. EX. 1350 was offered and received in evidence.)

Q. Mr. Eysmans, I am showing you a document which has been marked for identification "1351", and ask you to state whether you recognize that.

10101 The witness identified Com. Ex. 1351 as a letter

received from Mr. Campbell in due course of mail; Com. Ex. 1353 as a letter received from Mr. Campbell in due course of mail. No one but the witness would put
10102 that red mark on the letter (indicating); Com. Ex. 1354 as a letter, a file copy of a letter from him to Mr. Campbell; Com. Ex. 1355 as a document he received in the mail, but he doesn't know who was the author of
10103 the memorandum. He received it some time after July, 1931; Com. Ex. 1356 as a letter, dated June 12, 1931, from W. W. Campbell to General Atterbury, President of "our" Company. He recognizes General Atterbury's handwriting in pencil in the left hand bottom corner, putting the communication to the Monday
10104 conference of his staff. The words "Tuesday 3 P. M. 2:15" are in his handwriting and also the word "preferences". That writing appears in the lower left corner, all through the bottom, he will say, the various pencil references are at the bottom of the communication; Com. Ex. 1357 as a letter received by him from Mr. Campbell in the United States mail. At the top of
10105 the communication is shown the date, July 21; that is in his handwriting. That confirmed the date of the meeting; Com. Ex. 1358 as a letter, dated July 31, 1931, received through the United States mail from Mr. Campbell; Com. Ex. 1359 as a letter, dated July 18, 1931 received by him through the United States mail from Mr. Campbell.

Mr. MacIntyre: Now, if Your Honor please, I want to call attention, for the benefit of Respondents' Counsel, to the connection of these documents with those previously received:

Commission's Exhibit 1351 is a document of which Commission's Exhibit 1043-4A is a copy; Commission's Exhibit 1353 is a document of which Commission's Exhibit
10106 1043-3N is a copy; Commission's Exhibit 1354 is a document of which Commission's Exhibit 1043-2Z is a copy. It was previously marked for identification on May 26 in New York—that is May 26, 1938—as Commission's Exhibit 1148, but we have stricken out the "1148"; that will account for the cancellation of "1148."

Commission's Exhibit 1355 is a document of which Commission's Exhibit 1043-3Y is a copy.

Commission's Exhibit 1356 is a document of which Commission's Exhibit 1043-P is a copy.

Commission's Exhibit 1357 is a document of which Commission's Exhibit 1043-W is a copy.

Commission's Exhibit 1358 is a document of which Commission's Exhibit 1043-2H is a copy.

Commission's Exhibit 1359 is a document of which Commission's Exhibit 1043-Y is a copy.

We now offer these documents in evidence.

10109 Q. Did you, in reply to Mr. Leisure, Mr. Leisure's question, Mr. Eysmans, intend to have us believe that during the course of this correspondence with Mr. Campbell you did not discuss with him the subjects that these letters—that is, from time to time, the subjects that these letters purport to have been taken up with you by him?

A. Will you let me see the date, and I can answer that more clearly?

(The paperwritings were handed to the witness by Mr. Leisure.)

10110 A. My answer to the question is that I did not orally discuss any of the material in these letters with Mr. Campbell, that whatever discussion there may have been with Mr. Campbell, so far as I am con-

10111 cerned, or anyone in my organization, was done by letters.

By Mr. MacIntyre:

Q. In other words, we would understand you to state that you replied to these letters, or replied to these letters by writing to Mr. Campbell, and then you, in turn, received further replies from him?

A. In some cases there they were not acknowledged; in some cases they may have been acknowledged. I saw Mr. Campbell during all this time, that is, during the particular period. It is my distinct recollection I met him only once, and that was at the meeting in the Commodore Hotel on July 22, 1931. I was not present at the second meeting. I am not sure—in Philadelphia, held in Philadelphia. I am not sure that Mr. Campbell himself was there, and I am pretty well convinced as to my recollection that the only matters discussed at that meeting in Philadelphia as reported by the representative of our company who attended it, was the subject of freight rates.

Q. That is, the Philadelphia meeting?

Trial Examiner Norwood: Considering all of the cir-

cumstances, do you have any doubt as to Mr. Campbell having written those letters to you which purport to bear his signature?

The Witness: Your Honor, I can't swear that that
10112 is Mr. Campbell's signature.

Trial Examiner Norwood: I say, do you have any doubt about it? Do you have any feeling of doubt?

The Witness: I haven't any doubt, sir, that the letters were either sent by him or someone in his office, if that is what you mean.

10113 (COM. EXS. 1351, 1353, 1354, 1355, 1356, 1357, 1358, and 1359 were offered and received in evidence.)

10114 *Cross-Examination by Mr. Leisure*

Q. Mr. Eysmans, there has been a series of exhibits offered here this morning. There is in one group a series of letters purporting to be signed by Mr. W. W. Campbell. There is a typewritten name after the signature in most instances marked "President." Who was Mr. Campbell?

A. President of the National Builders Supply Company, I think, of one of the local units, I don't know whether it was in Ohio or in Western Pennsylvania.

Mr. MacIntyre: Mr. Eysmans, pardon me.

Off the record.

Do you mean "company" or "association"?

The Witness: Association.

By Mr. Leisure:

Q. When you say "association," Mr. Eysmans, do you mean association of dealers? Is your knowledge of Mr. Campbell to that extent?

A. Yes, sir; dealers.

Q. And there are some other letters here which have been written on the letterhead of the Youngstown Ice Company and those purport to be signed by a Mr. E. J. Holway, H-o-l-w-ay.

10115 Do you know who Mr. Holway was?

A. An officer of the Youngstown Ice Company and he may have been an officer—a member, rather, of the Supply Association.

Q. I see.

Now, Mr. Eysmans, there are also three exhibits here which purport to be copies of communications between you

and Mr. Campbell; I mean by that, two of them purport to be copies of letters written by you to Mr. Campbell, and one purports to be a Western Union telegram which you sent to Mr. Campbell.

During this period of time, Mr. Eysmans, did you enter into any agreements or understandings with the manufacturers of the cement companies with respect to combining or dispensing with the use of trucks?

A. Nothing whatsoever.

Q. Was your sole motive, Mr. Eysmans, as a railroad official, to try to get all the business that you could for your railroad?

A. Yes, sir.

Q. Were those the motives which actuated you in these communications with these gentlemen?

A. Only those motives.

Q. And did you have any conferences or oral understandings of any kind with these gentlemen concerning those transactions?

10116 A. Only interviewed once.

Q. And did you have any understanding or agreement to act in any certain way?

A. No, I merely appealed to the gentleman that I interviewed, Mr. Affleck, president of the Universal Cement Company; his office was in Chicago; I stopped in to see him one day that I was in Chicago about this particular period to ascertain what his policy was going to be in respect of shipping cement from his mills.

Q. And that, you felt, you had a legitimate right to do?

A. I do.

Q. To interview a cement executive and try to induce him to use the rails instead of using the transportation of one of your competitors?

A. Yes, sir.

Q. Mr. Eysmans, as bearing on that, there have been some 18 exhibits offered in evidence this morning upon the theory you entered into a conspiracy and that you are a co-conspirator with the Respondents in this case, respectively, the cement manufacturers.

I ask you now whether or not you ever entered into any understanding or agreement—

Mr. MacIntyre: I object—

Mr. Leisure: Let me finish.

Trial Examiner Norwood: Let him finish his

10117 question.

By Mr. Leisure:

Q. (Continuing)—with the manufacturers in any way whatsoever?

Mr. MacIntyre: If Your Honor please, I object to the question and any answer that would be made to the question because it obviously calls for conclusions. If Mr. Leisure cares to ask this witness as to any act or circumstances that this witness was connected with, he may do so, but as to legal conclusions as to what amounted to conspiracies or agreements, we most strenuously object.

Mr. Leisure: Your Honor, I am utterly amazed Mr. MacIntypre should make such an objection to a question of that kind. It is not a bit different than if a witness were on the stand and you asked him whether or not he was guilty of the charges that had been made against him.

Here is a man on the stand. I am asking him whether or not he ever entered into any understandings or agreements and we are being charged with official understandings and agreements and these exhibits couldn't be offered in evidence on any other theory.

Now, I seek to ask the witness the question, and Mr. MacIntyre objects to it.

10118 Trial Examiner Norwood: The objection is overruled.

By Mr. Leisure:

Q. Will you answer the question.

The Witness: Now, Your Honor, you will have to answer the first part of that question as to whether we are conspirators, or not.

Trial Examiner Norwood: The question contained in the last part of it. The other was merely explanatory.

The Witness: If it will be confined to that, Your Honor, I will answer it, but I cannot answer the first part of it.

Trial Examiner Norwood: Read the last part of it.

(Record read as follows:

"I ask you now whether or not you ever entered into any understanding or agreement with the manufacturers in any way whatsoever.")

A. I can answer that "No, sir."

By Mr. Leisure:

Q. And in carrying on—

The Witness: Wait a moment, wait a moment—

10119 Your Honor, I am answering the second part of the question; that is clear in the record, is it?

Trial Examiner Norwood: Yes.

The Witness: Not the first?

Trial Examiner Norwood: Yes.

The Witness: O.K.

By Mr. Leisure:

Q. Mr. Eysmans, in carrying out these transactions represented by the 18 exhibits that have been offered in evidence, would you at that time, or any other time, have intentionally entered into any such agreements or understanding with the manufacturers?

A. I would not.

Q. And I understand you to say that you did not?

A. I did not.

10120 The witness identified Com. Ex. 1149 A, B and C as a letter he wrote to R. N. Collyer. He can't recognize "C" as an enclosure that he sent along with the letter. The document he is referring to is a closed—some kind of scale of rates—he can't be sure that they accompanied the letter; there is no reference to it in the communication. He recognizes his handwriting in the upper right hand corner of Com. Ex. 1149 A and the signature at the bottom of Com. Ex. 1149 B as his in his handwriting; Com. Ex. 1150 as a letter from his office to R. N. Collyer.

10121 It is not his signature. His name was signed by someone who had authority to sign the letter.

WILLIAM McLELLAN POMEROY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

10122 I am assistant to the general traffic manager of the Pennsylvania Railroad and have held that position for 5 year. Previous to that I was with the Pennsylvania Railroad in Pittsburgh as general freight agent and before that as freight traffic manager. I was freight

10123 traffic manager at Pittsburgh from January 15, 1931, to June 1, 1932. In connection with my employment in that position during that period at the direction of my superiors I had occasion to attend meetings with represen-

tatives of the Bessemer Cement Company at Youngstown and the Green Bag Cement Company in Pittsburgh, at which the trucking of cement was discussed.

The witness identified Com. Exs. 1360 A-B as the proceedings of a meeting held on August 13, 1931, in the office of the Bessemer Portland Cement Company in Youngstown; Com. Ex. 1361 as the proceedings of a meeting
10124 held on August 27, 1931, in the office of the Green Bag Cement Company, Pittsburgh.

It was a correct record as to who attended in both
10125 instances. The memoranda were prepared at the time of these meetings and purported to represent what transpired at that time and in substance, they set forth what did transpire at that time as nearly as he could recall.

Mr. MacIntyre: Your Honor, we now offer in evidence Commission's Exhibits 1360-A and -B, and Commission's Exhibit 1361.

We call attention to the fact that Commission's Exhibits 1360-A and -B are documents of which Commission's Exhibit 1043-2N and 1043-2O are copies, and Commission's Exhibit 1361 is a document of which 1043-3G is a copy.

10126 *Examination on Voir Dire by Mr. Leisure.*

Q. Mr. Pomeroy, on this exhibit, Commission's 1361—well, I will take Commission's Exhibits 1360-A and B first—did you prepare the documents?

A. I can't state that.

Q. As to Commission's Exhibit 1361, did you prepare it?

A. I can't tell.

Q. Do you know who did prepare them?

A. No, I do not.

Mr. Leisure: Your Honor, I make the same objections, in order to save time, that we made to the originals, or, rather, to these exhibits when they were offered heretofore.

Trial Examiner Norwood: Yes.

Mr. Leisure: And I add that there is no need of offering them in evidence again and encumbering the record, and I also make the additional objection that it now appears that these are exhibits of an unknown author, and they are not binding upon any of the Respondents in this case. They are pure hearsay, as far as that goes.

Trial Examiner Norwood: Any further objections?

10127 Mr. Zimmerman: They are proceedings that relate to meetings held in 1931. There is no showing of any connection between these exhibits, or transactions, and the Respondent Institute—certainly none so far as the Respondent Marquette is concerned. They could not, in any event, be binding upon, or received in evidence, against any Respondent who is not shown to in some manner have had knowledge thereof, given approval thereof, or in some manner to be connected therewith.

Mr. Hershberger: It is understood that the same objections apply as far as—

Mr. Zimmerman: Yes, to everybody.

Trial Examiner Norwood: Yes.

Trial Examiner Norwood: The objection is overruled and they are received as marked.

(COM. EX. 1360-A, 1360-B, and 1361, was offered and received in evidence.)

10128 *Cross-Examination by Mr. Leisure.*

Q. Mr. Pomeroy, on your direct examination you stated that there were meetings with the Bessemer and Green Bag Companies. Did you mean by that that you had meetings between your own company and each of these companies, or did you mean that you all three met together?

A. They were separate meetings.

Q. Now, with reference to those meetings, did you mean that you, yourself, called at the offices of one of the cement companies, or your representatives called at the offices of one of these cement companies?

A. May I inquire: Are you referring to whether I called personally or some representative of mine?

Q. No, I am trying to develop the fact as to whether this was a town hall meeting or whether or not you went to the cement companies' offices and you refer to that now as a meeting.

A. That is correct. Representatives of certain railroads went to these two offices at different times.

Q. And at one time you went to the Green Bag
10129 Company and at another time you went to the Bessemer Company?

A. That is correct.

Q. There was not any general meeting of the three of you?

A. No, sir.

Q. Mr. Pomeroy, your purpose in going to the Green Bag Company or to the Bessemer Company was what?

A. It was as the result of instructions from the traffic executive of the association with the object of discussing freight rates.

Q. And was your purpose to try to get business for the railroads, to get cement shipments over the railroads?

A. Absolutely. That is what we were interested in.

Q. Now, at either of those meetings, or at any other time, did you come to any understanding, or agreement with the companies in question that you would act in a certain way?

A. No, sir.

Q. Now, as to these exhibits, you cannot say of your own knowledge at this time whether or not they correctly state what transpired at the meeting in 1931, can you?

A. I can only state that in a general way, not in detail.

Q. I notice here in the first paragraph of Commission's Exhibit 1360-A, it speaks of representatives of the industry, and then there follows a statement about trucking cement and other building materials. Do you know whether that statement has reference to the building material
10130 industry or the cement industry? Do you have any recollection as to that, to the dealers or to the manufacturers?

A. May I ask that be repeated, just how it reads there?

Q. Yes. It says, "Representatives of the National Building Material Dealers Association as to unsatisfactory conditions in the industry."

Suppose I let you see the paragraph (handing a paper-writing to the witness).

A. Thank you very much.

It is my understanding it had to do with the dealers.

Q. So it is your understanding that this phrase "unsatisfactory conditions in the industry" had to do with the dealers?

A. Yes, sir.

10131 Q. Mr. Pomeroy, your recollection of the details of what transpired at these meetings,—that is, the meetings held during 1931,—would, as of today, be com-

plete, would it, or would you have to rely upon some record of what transpired at the meetings as to those details in order to recollect as to just what did transpire?

A. At these meetings—these particular meetings?

Q. Yes.

A. I would have to rely on records.

Q. You do not recall in detail?

A. No, sir.

Q. Independently of these records of the meetings, just what did transpire?

A. No, sir.

Q. Now, as to this question—the last question that Mr. Leisure asked you—that is, concerning the industry that is referred to in the fourth line of that first paragraph of Exhibit 1160-A, of which I am showing you a photostat (showing paper to witness)—did you mean your answer to Mr. Leisure's question to be confined to the building material industry, that is dealer industry, or to comprehend both the cement manufacturing end of it, as well as the dealer end? There is no qualification in the report to show whether or not it was to be specifically confined to the industry of distributing, or to comprehend both the

10132 distributing as well as the manufacturing industry of cement as the building material?

Mr. McFadden: Are you giving the answer to that question?

Mr. MacIntyre: No, I am asking him now just what he did mean.

A. I am not—I meant just what I said before,—it is my understanding that the trouble in the industry, or in the marketing of cement, was in the—with the distributors, the dealers.

Mr. Leisure: That is what he said.

By Mr. MacIntyre:

Q. Did you understand the manufacturers to say they were having any trouble whatever? You don't know what they interest was?

A. I don't know as to the price situation; no, sir; and didn't at the time.

Q. You cannot recall, at this time, then, why you were discussing these problems with the Bessemer Cement Company, if the problem was entirely that of a dealer, can you?

Mr. Leisure: Now, the witness told me why he went there; he said he went there to try to get business.

Trial Examiner Norwood: Let him answer the question.

A. Yes, I recall distinctly why we were discuss-
10133 ing—why I was discussing the proposition— the question with the companies, it was with the thought and for the purpose of trying to do something that would get the business to the railroads.

Q. What "something" on the part of the cement manufacturers did you hope that they could do so that you could get that traffic back to the railroad?

10134 A. Of course, the routing is controlled either by the cement shippers or the consignees and we hoped that we would be able to have them favor us with the business.

Q. That is, to have their cement shipped by rail rather than by truck.

A. Yes.

J. B. LARGE, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

10135 I am General Traffic Manager of the Pennsylvania Railroad and have been in that position since February 1, 1934. Previous to that date I was Assistant General Traffic Manager on June 1, 1932. On July 1, 1929 I was General Traffic Manager but with general reduction in the organization I dropped from General Traffic Manager to Assistant Traffic Manager and then back to General Traffic Manager again.

Mr. MacIntyre: I would like to have you mark these with the next numbers consecutively.

(The documents referred to were marked Commission's Exhibits Nos. 1362, 1363, 1364, 1365, 1366, and 1367, for identification.)

By Mr. MacIntyre:

The witness identified the following exhibits:

Com. Ex. 1362 as a memorandum to him dated
10136 August 28, 1931 from Mr. Oliver, dealing with the general question of trucking sement. It was removed from the office files by the Federal Trade Commission. The initials "H. C. O." were the initials of Mr. Oli-

ver, Freight Traffic Manager at Pittsburgh for the Pennsylvania Railroad, and are in Mr. Oliver's handwriting.

Com. Ex. 1363 as a memorandum to him dated August 27, 1931 from Mr. Oliver, dealing with the same subject.

10137 Com. Ex. 1364 as a memorandum with a notation to him by Mr. Eysmans. In the lower left hand corner, in Mr. Newland's handwriting is a penciled note to the phoning of the information to the Freight Traffic Manager at Pittsburgh.

Com. Ex. 1365 as a memorandum to him dated November 17, 1931 from Mr. Oliver, dealing with the same subject and bearing the penned initials "H. C. O." of Mr. Oliver, Freight Manager at Pittsburgh, in Mr. Oliver's handwriting.

10138 Com. Ex. 1366 as a memorandum to him dated December 30, 1931 from Mr. Oliver, bearing a notation from the witness to Mr. Eysmans and Mr. Eysmans' notation. The penned initials "H. C. O." are in Mr. Oliver's handwriting.

Com. Ex. 1367 as a memorandum to him dated August 20, 1931 from Mr. Oliver containing a notation in 10139 green which was the witness' method of marking the letters for filing. Com. Ex. 1363 contained the same green mark. The green marked initials on the upper right corner of Com. Ex. 1366 was made in the handwriting of the witness.

Mr. MacIntyre: I would like at this point, for the benefit of Respondents' Counsel, and the record, to point out that the documents marked as Commission's Exhibit 1366 is a document of which Commission's Exhibit 1043-4-O is a copy; Commission's Exhibit 1362 is a document of which Commission's Exhibit 1043-3-I is a copy; the document marked as Commission's Exhibit 1364 is a document of which Commission's Exhibit 1043-2K is a copy; Commission's Exhibit 1365 is a document of which Commission's Exhibit 1043-4D is a copy; 1363 is a document of which Commission's Exhibit 1043-3H is a copy; Commission's Exhibit 1367 is a document of which Commission's 10140 Exhibit 1043-2Y is a copy.

We now offer in evidence Commission's Exhibits 1366, 1362, 1364, 1365, 1363, and 1367.

(The paperwritings referred to were handed to Mr. Leisure.)

10141 Mr. Leisure: We make the same objection to this group of exhibits that we have heretofore made, Your Honor.

I point out that they are inter-office communications not binding on the Respondents in this case.

Mr. Oliver is the author of many of these exhibits. We are deprived of the right of cross examination and they have already been offered in evidence. Because we are deprived of the right of cross examination; because they have already been offered in evidence, we object to them.

Trial Examiner Norwood: They are received as marked. The objections are overruled.

COM. EX. 1362, 1363, 1364, 1365, 1366, and 1367 were offered and received in evidence.)

10147 (COM. EX. 1342 was offered and received in evidence.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: Now, if Your Honor please, I want to call your attention to Commission's Exhibit 1043-5C and -5D, which at the time they were offered was a copy of a two-page letter purporting to have been sent by G. W. Cole, general traffic manager of the Medusah Portland Cement Company, Cleveland, to Eugene Morris, general chairman of the Central Freight Association, Chicago, under date of April 12, 1932.

My recollection is, that at the time that was of-
10148 fered, Mr. Leisure stated that he had no objection to that exhibit, subject to check. We have, however, since the date that was offered, been able to secure a facsimile of the original of that exhibit bearing a facsimile of the signature of Mr. G. W. Cole, general traffic manager of the Medusa Portland Cement Company, and we would, without objection, like to replace Commission's Exhibit 1043-5C and -5D with the facsimile documents which I can have marked for identification at this time.

Trial Examiner Norwood: Well, if you are going to replace them, there is no use in marking them; is there?

Mr. MacIntyre: We can replace it with the original number.

Trial Examiner Norwood: If the Counsel agree to it.

Mr. Leisure: We have no objection to the substitution, but we will make the same objections as we made when the other exhibit was offered.

Trial Examiner Norwood: Yes.

Give the documents to the Reporter.

Mr. MacIntyre: I would like for the record to show, that the offer on these two in substitution—

Mr. Zimmerman: Well, I want to note the objection to the Commission's Exhibit 1043-5C and 5-D. The
10149 objections are the same as those made to the Commission's Exhibit 1342.

Trial Examiner Norwood: Well, this is just merely a substitution.

Mr. Zimmerman: Nevertheless, I would like to have the record show that I do object on the same grounds.

Trial Examiner Norwood: Yes. The Reporter was instructed to substitute these two documents, which are being handed to him.

Mr. MacIntyre: Except that we would like to delete—

10150 Trial Examiner Norwood: For Commission's Exhibit 1043-5C and -5D.

Mr. MacIntyre: Except that we would like to delete from the offer on Commission's Exhibit 1043-5D, the second paragraph, which is not considered to be anything other than a self-serving statement that this effort on the part of the cement companies is the first effort ever undertaken by them to eliminate the trucking of cement. It is not agreed by the Commission that this is the first effort that the cement companies ever undertook to eliminate trucking; therefore, we ask that the second paragraph of Commission's Exhibit 1043-5D be excluded, because we do not believe that could be in accordance with the facts.

Mr. Leisure: Well, we certainly do not agree to any deletions from the exhibits.

Trial Examiner Norwood: Are the exhibits already in evidence?

Mr. Leisure: Yes, sir.

Mr. MacIntyre: It was offered, yes, and received as Commission's Exhibit 1043-5D.

Trial Examiner Norwood: Well, suppose that you just make the substitution of the originals, and then you can make your motion later to strike something. It
10151 is already in evidence.

(Certain paperwritings were marked Commission's Exhibit 1043-5C and 1043-5D, in substitution for copies previously received in evidence.)

Mr. MacIntyre: Now I call attention to Commission's Exhibit 1043-5E, -5F, and -5G, which have been offered in the form of typewritten copies of a letter purporting to be from W. G. Cole, general traffic manager of the Medusa Portland Cement Company, Cleveland, to Eugene Morris, chairman of the Central Freight Association, Chicago, under date of April 15, 1932. We have since been able to secure a facsimile of that letter over the facsimile signature of Mr. G. W. Cole, and we would like to substitute that for the typewritten copy.

10153 Mr. MacIntyre: This is not a copy. This is a letter. The original offer of Commission's Exhibit 1043-5E, -5F, and -5G were admitted to be only typewritten copies that were furnished to agents of the Fed-
10154 eral Trade Commission. These are not typewritten copies, but are multigraphed or facsimile copies of such as were originally distributed through the mails.

Trial Examiner Norwood: The Reporter will make the substitution there for Commission's Exhibits 1043-5E, -5F, and -5G.

(Certain paperwritings were marked as "Commission's Exhibits 1043-5E, 1043-5F, and 1043-5G," in substitution of exhibits previously received in evidence.)

10158 Trial Examiner Norwood: The only agreement involved, as I understand it, is the agreement of Counsel for the Respondents that the papers offered here are the originals of which these Exhibits 1043-5C, D, E, F, and G are the copies. That is all you have to agree to. If you agree to that and agree to the substitution, the originals to be substituted—

Mr. Leisure: No, we are getting into something entirely different, Your Honor. We were not asked for that when Mr. MacIntyre started out.

Trial Examiner Norwood: No, that agreement was an offer subject to check—

Mr. Leisure: When?

Trial Examiner Norwood: At any time.

Mr. Leisure: When the original was offered or when Mr. MacIntyre started?

10159 Trial Examiner Norwood: When they were offered here.

Mr. Leisure: No.

Mr. Wooden: This agreement—

Mr. Leisure: The record ought to bear that out.

Trial Examiner Norwood: Any testimony that relates to the original copies will relate to these papers, except the testimony that they are copies of the originals.

Mr. Leisure: I think there is some mistake, Your Honor. These are not originals; these are other kinds of copies.

Trial Examiner Norwood: Yes, they are photos of originals.

Mr. Wooden: No.

Mr. Hershberger: No, they are not.

Mr. Leisure: These are not.

Trial Examiner Norwood: I think I will have to—I do not think we should waste any more time on this.

Mr. MacIntyre: I think we will just withdraw the offer for substitution at this time.

Trial Examiner Norwood: I think I will rescind the instructions to the Reporter to substitute those documents for the present Exhibits 1043-5C, D, E, F, and G, and leave the matter—

10162 EVERETT MacINTYRE was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination

10167 By Mr. Wooden:

Q. I will show you, Mr. MacIntyre, a number of papers marked for identification as Commission's Exhibits 1370 to 1374, inclusive. Will you state what each of those is?

A. They are basing point map, that is, 1370, 1371, 1372, 1373 are basing point maps which were transmitted to me by Mr. Crapo, or someone for him, between the dates of—that is, on the date of June 30, 1934. I had seen him on June 25, '34, and the post date under which these were mailed was June 30, 1934.

1374 is the cover under which they were mailed to me, bearing the post date I have indicated.

Mr. Wooden: I may as well go ahead with these others, too.

(Documents were marked Commission's Exhibits Nos. 1375, 1376, 1377, 1378, 1379, 1380, for identification.)

10168 By Mr. Wooden:

Q. Mr. MacIntyre, referring to the Commission's Exhibit, for identification, 1370 to 1373, inclusive, is all the legend and data on the face of the maps as submitted to you by Mr. Crapo and as received by you (indicating)?

A. All except the identification marks of the Official Reporter.

Q. Do I understand that these maps with the information shown on them as to the basing point prices, were furnished you by Mr. Crapo in response to your request for information as to the basing point prices which he had used in making up his delivered prices filed with the Code Authority?

A. That is correct.

Mr. Wooden: I offer those in evidence, Your Honor, Commission's Exhibits 1370 to 1374, inclusive. (Handing the exhibits referred to to Mr. Leisure.)

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: Let the record show that Commission's Exhibit No. 1352 was passed over, that there is no exhibit bearing that number.

Mr. Leisure: Mr. Wooden, do you have any objecting to merely offering the maps? It will mean that we will have to photostat all of these extra pages if you are. Do they serve some purpose? I notice you carry the same

10169 number.

Mr. Wooden: They do not serve any special purpose.

Mr. Leisure: So you offer merely the maps and not those additions?

Mr. Wooden: Yes gladly.

Mr. Leisure: With Your Honor's permission, we object to all of these maps being received in evidence as incompetent, irrelevant, and immaterial, and, particularly as being hearsay, in that in certain legends at the bottom of the maps they purport to show what other companies established, certain prices as of the date of the map, I assume, as to the territory or zones marked or said to be controlled by certain notes or legends in the lefthand corner of the maps. That also we point out is hearsay, and I submit that any of these maps could only be binding on the company that submitted them. I object to them being received at all.

Trial Examiner Norwood: I think the witness said that all that information was on the maps when Mr. Crapo furnished them. Is that right?

Mr. Zimmerman: Yes.

The Witness: It was on the maps and he had explained to me previously how and why he could place such
10170 on the maps. He stated that that is the way he made up his basing points information, instead of making it up in typewritten lists, and he used them in that manner in his office.

Trial Examiner Norwood: Any further objection?

Mr. Smith: As far as Huron is concerned, we have no objection, it being understood, of course, that these are statements—these are pictures and statements submitted to Mr. Crapo, and I only call attention to one thing and that is that in the characterization of them by the witness he is in slight error. They are each and all headed, for instance, the first one, "Ohio Base Prices on Cement." The next is "New York Base Prices on Cement." He said "basing-point maps." That may or may not be correct, but that is not the description upon the document itself.

10171 I also call attention to the fact that on their face they purport to be statements of the rates and territory—prices and territory as of certain dates set forth on each exhibit.

(COM. EXS. 1370, 1371, 1372, 1373 and 1374 were offered and received in evidence.)

Mr. Wooden: Your Honor, I might state that in so far as the language "Territory controlled by certain basing points," or certain companies having basing points, that it is just what the basing-point system implies and involves as shown by testimony already taken and given by Mr. Nyland and others in the case.

Mr. Smith: That is all, of course, a question of argument.

Trial Examiner Norwood: The Respondents may cross-examine the witness on that.

Mr. Zimmerman: It is not a question of cross-examination; it is simply a question of conclusion and an argument of Counsel for the Commission.

Trial Examiner Norwood: As I understand it, the witness said that Mr. Crapo represented them to be
10172 certain things. Now, if you want to clarify that—

Mr. Smith: No, Your Honor, the witness has not

so testified. All the witness has said was that he described them in his language as basing-point maps.

Mr. Zimmerman: They show on their face.

Mr. Smith: The maps show for themselves.

Trial Examiner Norwood: Yes; you may cross-examine him on that, if you want to.

Mr. Wooden: I will pass that by.

Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Prior to the time that Mr. Crapo furnished you with this information, in 1934, had you received or obtained similar information from him as of a different period prior to this time?

A. Mr. Anderson H. Tackett of the Commission's staff and I, together, had obtained such information from him, I believe, through the mail.

Q. I am showing you now papers marked as Commission's Exhibits 1375 to 1380, inclusive, for identification. Will you state what they are.

Mr. Smith: Let me just make an inquiry here.

Examination on Voir Dire by Mr. Smith.

Q. Do I understand you to testify, Mr. MacIntyre, 10173 that Mr. Crapo had ever sent any other bundle of maps to you except this bundle that has already been received in evidence?

A. Oh, Mr. Crapo has sent at least three bundles of basing-point maps to us, of which—

Q. You are not answering my question. I am talking about sending it to you.

A. I am not sure that they were addressed to me personally.

Q. Oh.

A. But they were addressed to people with whom I was working at the time that they were sent in, including Mr. Anderson H. Tackett.

Q. Isn't this a fact, Mr. MacIntyre, that Mr. Tackett called upon Mr. Crapo alone. You were not there. And Mr. Crapo showed him some maps. Mr. Tackett asked for them; Mr. Crapo sent them to him personally, and those are the maps you now have, and that all you know about them is that you got them from Mr. Tackett. Isn't that a fact?

A. No, these maps here are not in the group that he sent to Mr. Tackett on that occasion. Mr. Smith, that was still another batch of basing-point maps that he sent to Mr. Tackett as a result of a visit by Mr. Tackett to Mr. Crapo during September of 1931.

I have been attempting to locate those maps, and I haven't as yet been able to find them.

Q. But these maps you got also from Mr. Tackett, did you not?

10174 A. No, this first group was mailed to me.

Q. I am talking about the second group.

A. The second group was received at the Federal Trade Commission here, and I can't state whether they were addressed to Mr. Tackett or whether they were addressed to me, but at the time Mr. Tackett and I were working together in connection with the study of the cement industry for the Federal Trade Commission, and when the mail was opened Mr. Tackett and I studied the maps and made use of them in connection with the report that was then in the process of preparation.

Q. What is the date that you got this second bundle of maps on?

A. The second bunch came in June 2, 1933. It was within two or three weeks after my visit to Mr. Crapo on Map 12, 1933, and, as my recollection at this time serves me, they were sent by Mr. Crapo in response to a request that I made of him on May 12 for a list of basing points and basing-point prices.

Q. Let us just get this correct—

Mr. Wooden: Let me ask a question.

By Mr. Smith:

Q. Was that 1933 or '34?

A. '33.

Q. Well, this is a new interview that we haven't heard anything about before?

10175 Mr. Wooden: Oh, yes, he testified to it the other day and further followed it up today about May 12, 1933.

By Mr. Smith:

Q. The date was May 12, 1934, as I understand?

A. May 12, 1933.

Q. Let us get it straight: You have had an interview in May, 1933?

A. May 12, 1933.

Q. Was there an interview in the fall of that year?

A. I can't recall. I believe Mr. Crapo was also interviewed in the fall of '33.

Q. By you?

A. As well as on May 12, 1933.

Mr. Wooden: What does this line of questioning have to do with the matter of identifying these papers, Your Honor?

Mr. Smith: Well, the purpose of the inquiry was to demonstrate that Mr. Crapo never delivered those to Mr. MacIntyre; that Mr. MacIntyre got them from somebody else.

Trial Examiner Norwood: I think he may ask the question.

Mr. Wooden: I want to ask one further question, at any rate.

10176 *Direct Examination (Resumed) by Mr. Wooden.*

Q. Are the papers marked as Commission's Exhibits 1375 to 1380, inclusive, the maps that you have been referring to as received from Mr. Crapo on June 2, 1933?

Mr. Wooden: I should say that two of those exhibits are not maps but memoranda, Commission's Exhibits 1377 and 1379.

A. The documents marked as Commission's Exhibits 1375 to 1380, inclusive, consist of basing-point maps, and two explanatory notes of those maps, which were received in the mail shortly after I had made a request for such information upon Mr. Crapo, on May 12, 1933. They were received through the mail on June 2, 1933.

Mr. Wooden: I will offer them and then they can cross-examine on the identification.

Mr. Leisure: Your Honor, in the interests of saving time, I will simply reiterate the objections we made to Commission's Exhibits 1370 to 1374, inclusive, and I point out to Your Honor that there are certain hearsay statements contained with these maps, the heading of Commission's Exhibit 1377 being "On March 10, 1933, A New Type of Service Was Inaugurated." And on Commission's Exhibit 1380, there is a statement that on April 17,

10177 1932, the Wabash Portland Cement Company" did certain things,—clearly hearsay statements.

We add that to the objections heretofore made.

10178 Mr. Wooden: Your Honor, I take issue with the statement that the statements by parties to the case or information furnished by parties to the case is or can be hearsay.

Trial Examiner Norwood: Were the statements furnished with those maps by Mr. Crapo?

The Witness: They were as explanations of the territories covered by the different basing point prices as shown on the maps.

Trial Examiner Norwood: I see. There is no reason why they are not on the same basis as the maps, it seems to me.

Mr. Wooden: They are part of the maps, you might say.

(COM. EX. 1375, 1376, 1377, 1378, 1379, and 1380, were offered and received in evidence.)

10179 Mr. Wooden: This exhibit, Commission's Exhibit No. 1318, carries a facsimile signature of Mr. Rooney, and appears to be the thing that is referred to in Commission's Exhibit 1377 as a new type of service inauguated on March 10, the date of that Commission's Exhibit No. 1318.

Mr. Smith: We have no objection to the Commission's Exhibit 1318.

Mr. Leisure: The only objection we have to it is that it is already in the record.

10180 (COM. EX. 1318 was offered and received in evidence.)

10211 Washington, D. C.,
November 3, 1938.

10213 *Cross-Examination (Continued) by Mr. Leisure.*

Q. Mr. MacIntyre, that group of maps we had here yesterday sent to you by Mr. Crapo. Do you remember the ones I am referring to?

A. There were two groups, as I recall.

Q. Yes; they were offered in evidence.

A. I believe they were, and received.

Q. Did Mr. Crapo tell you just how he used those

10214 maps in his business?

A. Yes, he did.

Q. Do you recall what he said as to how he made use of them?

A. On the occasions that I made a request for the copies of the maps, as well as on previous occasions he had showed me the maps, that they were actually used, which had the various colors for the different territories controlled by the various bases and basing-point prices and had explained them to me, and I had requested, of course, copies of them.

I first requested lists of his basing-point prices. When he told me he had none of those I told him I wanted copies of his maps such as he was using. He stated to me he was using those instead of using lists of basing-point prices because he said those showed a picture, "I can get a picture of it at a glance whereas it is necessary to do figuring to see how far a particular base reaches if I merely have the list of basing-point prices before me, but with this map being a picture of those, I can gather it so much more quickly."

He and Mr. Jones, the sales manager, on the first occasion I met him, and Mr. Rooney, the assistant sales manager, were the ones using the maps; so he informed me.

Q. And that was the manner in which he used them, as you have explained to us?

A. Used them in connection with figuring the 10215 territories controlled by the various prices and limits of the territories and prices that would apply based on the basing-point prices shown on the map, and so on.

Q. Mr. MacIntyre, did he go into any detail with these maps with you in explaining how he used them? How he could use them instead of a typewritten list?

For instance, where a town is directly on the line.

A. He didn't go into any specific details as to any specific town but merely stated that these would show him generally the limits of the territories controlled by the various bases.

Q. And he said he used these instead of the list?

A. He told me he did not use lists but he did use these maps as an aid to him and his sales force in determining the limits of the control by the various basing-point prices.

Q. That is the manner in which he made use of the maps.

I am interested, now, in knowing how he used the maps, themselves. That is, you have told me how he made use

of them instead of the lists? I want to know how he would have used the maps.

Do you understand my question?

A. I don't know whether I do.

Q. How would he arrive at a price? If I asked you how he used the lists, you would know what I meant. Now, I want to know how he used the maps instead of the lists.

A. By using the basing-point price plus the low-
10216 est combination of the basing-point price and the freight to any particular destination in the territory.

Q. He used the list in conjunction with the map?

A. The list is a part of the map, as you will note on the first map, but instead of having a list covering several States without having the territory pictured on the maps, he has only listed the basing point and basing-point prices for a particular State or group of States, and the rate covered by those particular points on a map.

In that connection, as to the territory controlled by bases, I would like to further explain a statement as to that Buffington base I made reference to yesterday afternoon when Mr. Smith was cross-examining me. Mr. Crapo had stated that the leaders in the industry were urging him at the time he did increase the Alpena base price in 1933 to increase it so that it would take the pressure off the Buffington basing rate. In that connection he also said the Minnesota territory, such as was controlled by Buffington by the Steelton base, is also in the Minnesota territory.

He had made reference to Steelton, but in that direct connection he didn't mention Steelton, so I took his statements to mean both Steelton and Buffington when he mentioned Minnesota in conection with the Buffington territory.

Mr. Leisure: I think that is all.

10217 Mr. Zimmerman: I have nothing at all.

Mr. Wooden: Nothing further.

ADMIRAL CHRISTIAN JOY PEOPLES was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Q. Admiral, at the close of your testimony the day before yesterday, I was seeking to ascertain to what extent the Procurement Division has been able to make purchases in the last six months, or since your March 30th invitation of a f. o. b. mill basis.

Can you give us some details as to what proportion of the purchases in the last six months were made at destination or delivered prices?

A. That is, approximately what proportions, sir?

Q. Yes. If I am not mistaken, you mentioned the number of orders the other day as 17,500.

A. Yes, sir. "Of the 17,500 orders issued by all agencies of the Government in the last six months, it is estimated that at least 95 percent were placed on con-
10218 tracts as a result of awards made by lot from identical bidding—as a result of identical bidding at delivered destination prices. The remaining 5 percent covers orders on contracts where it was possible to obtain favorable f. o. b. mill or point of storage prices."

Mr. Leisure: I note that the—

Trial Examiner Norwood: Does that refer to cement orders?

The Witness: Yes, sir; cement orders; oh, yes.

Mr. Leisure: I note that the Admiral is reading from something. So that we may have the record correct, may we know what the Admiral is reading from?

The Witness: I am reading from prepared notes, sir, which refreshes my memory of the history of this whole entire complex situation.

Mr. Zimmerman: Well, may I ask, are those notes that you made yourself, Admiral?

The Witness: What? That I dictated.

Mr. Zimmerman: From what?

The Witness: Well, from the office record, and so forth.

Mr. Zimmerman: Well, who prepared this estimate?

The Witness: Well, the estimates were prepared in the branch of supply from reports made by various departments and agencies, and so forth.

10219 Mr. Landick prepared the estimate for me.

Mr. Zimmerman: Does that include all of the departments under your charge?

The Witness: As part of the procurement system of the Government; yes, sir.

Mr. Zimmerman: The entire procurement system?

The Witness: Yes, sir; part of the procurement system.

Mr. Zimmerman: I think that may go to the weight of the testimony, but the witness or the man who made the compilation ought to be the one called to testify. We could, therefore, find out something more about not only the authenticity but the dependability of the figures and the results. We can't very well go into that with Admiral Peoples because he isn't familiar with the detail. It is something that has been prepared by somebody else and handed to him.

Mr. Wooden: Prepared under his supervision, I take it.

The Witness: Yes, exactly so.

Mr. Zimmerman: Well, he doesn't pretend to know anything about what the original figures were.

Do you, Admiral?

Trial Examiner Norwood: Have you verified—

The Witness: The reports—

10220 Trial Examiner Norwood: —in whole or in part, the notes, and do you believe them to be correct?

The Witness: I believe them to be correct, absolutely, sir, because the reports come from all over the country.

Trial Examiner Norwood: Yes.

The Witness: Thousands of reports.

Trial Examiner Norwood: Now, this witness can refresh his memory, generally.

Mr. Zimmerman: Certainly.

Trial Examiner Norwood: If you object to his reading from the paper, unless the paper is in evidence, I shall have to sustain your objection. In that case, I shall let this witness give us the general information, if he can, or such general information as he can.

Mr. Zimmerman: Well, I think I am compelled to make that objection.

Trial Examiner Norwood: Yes.

Mr. Zimmerman: We are entitled to know the details of how this was made up by the person who made it. With all due respect to the Admiral, whether he believes it to be correct or not, is not material.

Trial Examiner Norwood: Well, I will ask the witness to refer to his documents there that were made under his supervision and refresh his memory and answer the questions.

10221 Mr. Wooden: Well, that already appears, I think, Your Honor.

Trial Examiner Norwood: What did you say?

Mr. Wooden: That already appears, that he is referring to notes that were made under his supervision.

Mr. Zimmerman: I move the answer be stricken out because it was a reading from the notes, as he says, which we couldn't have known. We had no idea how the thing was to be approached.

Trial Examiner Norwood: The motion is denied.

Q. Admiral, on the basis of your last answer, that 95 percent of the last six months' purchases were made by lot among identical delivered prices, of what value in such a situation is section 3709, that you deal with?

Mr. Leisure: Now, now, now, surely Mr. Wooden isn't going to ask the Admiral—

Trial Examiner Norwood: The objection is sustained.

Mr. Wooden: Your Honor, if a man who is trying to carry out the provisions of the section can't say whether or not he is able to carry the provisions out, I don't understand.

Trial Examiner Norwood: I would like this witness to tell us, he testified when he was last on the stand, of

10222 certain steps he took in his efforts to secure f.o.b. mill bids, and I am going to ask this witness if those efforts were followed by any substantial results in that direction.

The Witness: Your Honor, the results have been that on points west of Denver we have been able to obtain competition on the basis of f.o.b. mill prices.

Trial Examiner Norwood: That is, are you able to obtain—

The Witness: Favorable prices.

Trial Examiner Norwood: —different prices?

The Witness: Yes.

By Mr. Wooden:

Q. You mean within the last six months?

A. Within the last six months.

Trial Examiner Norwood: Yes?

The Witness: On points east of Denver satisfactory bids on the basis of f.o.b. mill have not been received, with the result that we have been forced back to the method of obtaining bids for delivery at destination, which has resulted the same as before.

Trial Examiner Norwood: Yes.

The Witness: That is, the identical bidding system. So, therefore, with respect to section 3709—

Mr. Leisure: Now, just one moment—

10223 The Witness: Our experience under section 3709—

Mr. Leisure: May I interrupt?

Trial Examiner Norwood: Let him finish his answer.

The Witness: That with respect to section 3709, our results at the point of deliveries east of Denver have been negative.

Mr. Wooden: Negative, you say?

The Witness: Negative.

10229 A. Under section 3709 we are required to advertise all proposals for commodities required by the Federal Government when time will permit and awards made to the lowest responsible bidder. That is our duty; to make award to the lowest responsible bidder.

By Mr. Wooden:

Q. Now, I ask you, Admiral, in view of that answer and your previous answers about the conditions in the purchase of cement, what value has the provisions of Section 3709 been to you in your purchase of cement?

10231 A. The value with regard to ability to make awards to the lowest responsible bidder on cement on the f.o.b. mill basis upon which competition has been invited was negative.

Trial Examiner Norwood: Did you notice any results in your efforts to secure f.o.b. mills?

The Witness: Yes, sir.

By Mr. Wooden:

Q. You said west of Denver.

A. West of Denver.

Mr. Wooden: I will go into that—

Trial Examiner Norwood: I will withdraw my question.

Mr. Wooden: I will go into that subject in a moment or two, but I have a further question before I am ready for that.

By Mr. Wooden:

Q. You said in your testimony day before yesterday, Admiral, that the value of obtaining bids f.o.b. mill, particularly, are almost wholly, as I get it, confined to
10232 land grant territory. Now, I will ask you whether or not, taking non-land-grant territory; say, the section east of the Mississippi and north of the Ohio, for example; whether even in that territory where you have mills scattered whose freight rates are different to given locations, whether there is not an advantage in f.o.b. mill bidding there, depending on where you want the cement delivered?

A. There has been, in carload lots, for the simple reason that the freight rates are less from the points of production to the points of delivery.

Q. Less from some mills than from others, you mean?

A. Yes, sir.

Q. Now, Admiral, will you refer to the occasions since April 15, 1938, where you have made proposals and received bids f.o.b. mill?

A. Yes, sir. I started to answer that question the other day and submitted a proposal which went into the record; specification No. 13290.

Mr. Leisure: Would you refer to the exhibit number so that we can follow it?

The Witness: I haven't got it here, sir. It went into the record. I don't keep track of the exhibit number.

Mr. Leisure: I thought you had the exhibit here.

The Witness: I am reading from a mimeographed
10233 copy of it.

Mr. Zimmerman: Is that the original invitation?

The Witness: One of the original invitations.

Mr. Zimmerman: I mean the one of March—

The Witness: No, this is issued April 14. Bids opened April 28. This was referred to in my testimony day before yesterday.

I want to go ahead with part of the method and answer the gentleman's question.

Trial Examiner Norwood: Go ahead.

A. That is in the record already.

The next schedule was issued to be opened May 12, 1938—

Mr. Leisure: Is the document you are reading from now in evidence?

The Witness: I will offer it right now.

10234 Mr. MacIntyre: I believe it is Commission's Exhibit 1341 that is already in evidence.

Mr. Zimmerman: But the next one is not in evidence yet?

Mr. Leisure: You are talking about the first one?

Mr. MacIntyre: The first one is in evidence.

Mr. Leisure: He is now on another one.

The Witness: I have to refer to this to get notes off of it.

Mr. Wooden: Will you mark this for identification?

Mr. Leisure: This is the third one you are referring to, isn't it?

The Witness: Yes, sir.

Mr. Wooden: What about the second.

The Witness: That went into the record the other day.

Mr. Wooden: I am informed it is 1341.

(Whereupon a paperwriting consisting of 11 sheets and firmly bound together was marked Commission's Exhibit No. 1381, for identification.)

A. This schedule, Commission's Exhibit 1381 for identification invited proposals for 250,000 barrels of cement for delivery at unrevealed points in the state of California.

The bids to be opened May 12, 1938.

Proposals were issued to 28 companies, which I 10235 will submit.

Mr. Wooden: I will offer the invitation which the Admiral has been talking about, and which has been marked for identification Commission's Exhibit 1381.

Mr. Leisure: Are you going to also offer the list of companies to which it was submitted?

Mr. Wooden: It is immaterial whether it goes in as a list or he names them from the list.

Mr. Leisure: Wouldn't we save time by having it marked?

Mr. Wooden: Mark this for identification.

(Whereupon the paperwriting referred to, consisting of 2 sheets and firmly bound together as one, was marked Commission's Exhibit No. 1382, for identification.)

Mr. Wooden: I will also offer 1382 which, I understand, Admiral, is a list of concerns to which Exhibit 1381 was sent?

The Witness: Exactly.

(Documents handed to Mr. Leisure.)

The Witness: Bids were received from—

Trial Examiner Norwood: Just a moment until he looks at the exhibit.

Mr. Leisure: We have no objection.

10236 (COM. EXS. 1381 and 1382 were offered and received in evidence.)

The Witness: Bids were received from six companies checked thereon.

By Mr. Wooden:

Q. That is 1382?

A. Yes. Shall I name them?

Q. Yes; go ahead.

A. Calaveras Cement Company, California Portland Cement Company, Monolith Portland Cement Company, Riverside Cement Company, Santa Cruz Pacific Company, and the Pacific Portland Cement Company.

The award was made to the Monolith, the lowest bidder.

All quotations were on the basis of f.o.b. mill.

Q. Was the land grant rate involved there?

A. No, sir.

Mr. Leisure: Just a minute. Are you going to offer in connection with this the underlying data?

He said the award was made to the lowest bidder.

Mr. Wooden: I understand the Admiral has the underlying data and I didn't propose to offer that any more than the other bids in other cases.

Mr. Leisure: Is it available?

10237 Mr. Wooden: It is available.

The Witness: Oh, yes.

Mr. Leisure: May we see it before you leave? That applies to all of the bids.

The Witness: I have all of the bids you wanted the other day of the opening of April 15.

The other bids are available if you want them.

Mr. Wooden: I don't know whether they are all here in the room.

Mr. Zimmerman: No, but we could get them here before he goes.

Mr. Wooden: Oh, yes.

A. The next schedule called for 6,000 barrels for the Bureau of Reclamation in Montana under the opening—

Mr. Zimmerman: May I interrupt just a minute?

The Witness: Yes, sir.

Mr. Zimmerman: Has this been marked?

I was just going to suggest this: There will be a series of these, won't there?

The Witness: Yes.

Mr. Zimmerman: Wouldn't it be easier and save interruption if you will have them marked as he wants to use them so that he can go right through?

The Witness: If you will permit me I will quote the fact from here and turn it in as an exhibit.

10238 Mr. Zimmerman: The difficulty is this: Whenever a reference is made in a testimony to any document it is usually given an exhibit number so that it appears just what it is that is being referred to.

Mr. Wooden: I will be glad to have them numbered, but I do not intend to offer them as exhibits.

Mr. Zimmerman: Of course, that is optional to some extent with the Examiner and with Counsel for the Respondent for this reason: That whenever a witness refers to and reads from a written instrument we may insist, I think, as a matter of fairness, on them being received in evidence.

Mr. Wooden: That is up to you. I merely state what I propose or do not propose to do.

Suppose we give them numbers, Admiral.

Will you see that the Reporter gets numbers on them for each case that is independent and so on?

The Witness: They are very voluminous, gentlemen.

Mr. Wooden: Even so, let them be marked since you are going to refer to them and describe the cases.

The Witness: As a matter of fact I need not put them in evidence.

Mr. Wooden: That will have to be determined by the Examiner, I suppose.

The Witness: They are public property. There 10239 are thousands of them in existence, you know.

Mr. Wooden: Oh, yes; it is just for mere reference purposes I want them numbered and when you refer to any particular case you can refer to them by number.

So that if you will permit me to have the Reporter mark these?

The Witness: Yes, indeed.

(Handing documents to the Reporter.)

The Witness: In this routine here; the way they come.

Mr. Wooden: These are the lists of concerns?

The Witness: Yes, sir. Do you want the lists in each case accompanying the invitation?

Mr. Leisure: I do, yes.

The Witness: I want to give the schedule and list of the firms to whom sent.

Mr. Leisure: It would be more convenient for the Admiral to keep them the way they are.

Mr. Wooden: Except this one, I take it; those (referring to small notes clipped on exhibit) are notes for his information.

Will you mark those, Mr. Reporter?

(Thereupon a certain document, consisting of one sheet, was marked Commission's Exhibit No. 1383, for identification.)

10240 (Thereupon a certain document, consisting of 12 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1384, for identification.)

(Thereupon a certain document, consisting of 2 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1385, for identification.)

(Thereupon a certain document, consisting of 9 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1386, for identification.)

(Thereupon a certain document, consisting of 4 pages and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1387, for identification.)

(Thereupon a certain document, consisting of 9 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1388, for identification.)

(Thereupon a certain document, consisting of 3 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1389, for identification.)

(Thereupon a certain document, consisting of 11
10241 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1390, for identification.)

(Thereupon a certain document, consisting of 4 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1391, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1392, for identification.)

(Thereupon a certain document, consisting of 2 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1393, for identification.)

(Thereupon a certain document, consisting of 12 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1394, for identification.)

(Thereupon a certain document, consisting of 3 pages and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1395, for identification.

(Thereupon a certain document, consisting of 2 pages and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1396, for identification.

10242 (Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1397, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1398, for identification.)

(Thereupon a certain document, consisting of 9 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1399, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1400, for identification.)

(Thereupon a certain document, consisting of 11 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1401, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1402, for identification.)

(Thereupon a certain document, consisting of 11 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1403, for identification.

(Thereupon a certain document, consisting of 1
10243 sheet, was marked Commission's Exhibit No. 1404, for identification.)

(Thereupon a certain document, consisting of 24 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1405, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1406, for identification.)

(Thereupon a certain document, consisting of 20 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1407, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1408, for identification.)

(Thereupon a certain document, consisting of 20 pages and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1409, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1410, for identification.)

(Thereupon a certain document, consisting of 13 sheets and firmly bound together as one exhibit, was
10244 marked Commission's Exhibit No. 1411, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1412, for identification.)

(Thereupon a certain document, consisting of 11 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1413, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1414, for identification.)

(Thereupon a certain document, consisting of 12 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1415, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1416, for identification.)

(Thereupon a certain document, consisting of 10 pages and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1417, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1418, for
10245 identification.)

(Thereupon a certain document, consisting of 10 pages and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1419, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1420, for identification.)

(Thereupon a certain document, consisting of 19 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1421, for identification.)

(Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1422, for identification.)

(Thereupon a certain document, consisting of 10 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1423, for identification.)

(Thereupon a certain document, consisting of 1 sheet,

was marked Commission's Exhibit No. 1424, for identification.)

(Thereupon a certain document, consisting of 20 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1425, for identification.)

10246 (Thereupon a certain document, consisting of 1 sheet, was marked Commission's Exhibit No. 1426, for identification.)

(Thereupon a certain document, consisting of 11 sheets and firmly bound together as one exhibit, was marked Commission's Exhibit No. 1427, for identification.)

10247 Trial Examiner Norwood: Go ahead.

Mr. Zimmerman: I want to call attention to this Commission's Exhibit 1381 for a moment.

Mr. Wooden: What number?

Mr. Zimmerman: 1381.

Trial Examiner Norwood: Yes.

Mr. Zimmerman: Is that complete, Mr. Wooden (indicating)?

Mr. Wooden: I can't tell you.

Mr. Zimmerman: Well, let's—

Mr. Wooden: The Admiral can tell you.

Mr. Zimmerman: Let's ask the Admiral if it is complete.

(The paperwriting referred to was handed to the Admiral.)

Mr. Zimmerman: In other words, does it have the specifications and everything that pertain to the invitations? Is it all there?

The Witness: All the conditions?

Mr. Zimmerman: All the conditions.

The Witness: Of the bidding, the quantity, and that sort of thing is all here.

Mr. Zimmerman: All right. That is what I want to know.

The Witness: There is a reference—

10248 Mr. Wooden: Do you want this on the record?

Mr. Zimmerman: Yes, because I want the record to show whether it is complete; that is all.

The Witness: There is a reference in here to the fact that this cement must conform to the specification CC-206. That is the printed standard specification.

Mr. Zimmerman: Outside of that it is complete?

The Witness: Yes, sir, it is.

Mr. Zimmerman: All right; thank you.

Mr. Wooden: Have you finished with that?

The Witness: Yes, I think we have finished with that.

By Mr. Wooden:

Q. Admiral, referring to papers marked for identification as Commission's Exhibits 1383 and 1384, will you state what they are and then give us a brief statement of the case involved with reference to the bidders and the bids, and what was done with it?

A. Yes, sir.

Mr. Leisure: Now, if the Admiral is going to do that, I think it ought to be offered. It has only been marked so far.

Trial Examiner Norwood: Yes, I think so.

The Witness: What?

Mr. Leisure: I am just asking that it be offered before you proceed.

10249 Trial Examiner Norwood: Ask the question independently of it, and he can use it to refresh his memory, and then you will not have to offer it.

Mr. Wooden: That is what I propose to do, use it as a reference, and he can testify from it.

Trial Examiner Norwood: Well, you should ask him—

Mr. Leisure: It is very apparent he is going to read from it.

Trial Examiner Norwood: Ask your questions regarding it and do not ask him to state the contents.

Mr. Wooden: I am not asking him to quote anything but I am asking him to describe the case that is involved in the particular papers.

Mr. Leisure: That is right.

Trial Examiner Norwood: The form of that question was objectionable.

Mr. Wooden: Well, at first, then I will confine the question to have him merely state what the papers are.

Mr. Leisure: I think we can save time. The papers speak for themselves, and they have been marked.

Trial Examiner Norwood: He can identify them.

Mr. Wooden: Well, now, I don't know whether this is a move to force me to offer this whole mass of

10250 paper, which I didn't intend to and don't propose to.

Mr. Leisure: Well, now—

Mr. Wooden: Because we are shut off from asking the Admiral to use the papers and testify by refreshing his recollection from them.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: Back on the record.

Mr. Zimmerman: May I suggest that it will be necessary—

Trial Examiner Norwood: Off the record.

Mr. Zimmerman: No, sir; this is on the record, if you please, sir.

I will begin again.

Trial Examiner Norwood: Now, wait a minute. If you want to go on the record, begin again.

Mr. Zimmerman: Yes, sir.

It will be necessary in order to make the true situation apparent, to go into some of the provisions of these various documents.

Trial Examiner Norwood: Yes.

Mr. Zimmerman: And I believe that they are not identical. Now, in so far as they are identical, and we can bring that out, then I suppose we can shorten the matter somewhat by indicating the changes or differences,
10251 or those that are identical, and, personally, I will try to do that.

Mr. Wooden: I am seeking to shorten this as much as possible.

Trial Examiner Norwood: Yes.

Mr. Wooden: That is why I didn't intend to offer these papers, but just to treat them like the bids that have been handled as matters for reference and checking as underlying data.

Trial Examiner Norwood: Go ahead.

Mr. Wooden: That is the purport of my question that has not been aswered, for him to state what the papers were that are before him, referring to them by number, and then describing the case that is covered by those papers.

Mr. Leisure: Now, Your Honor, may I point out that Mr. Wooden is apparently attempting to have the Admiral either tell us orally or by the use of these documents, of course, of a certain proceeding which he seeks to show as a charge against us in some way? Now, if that it, we are certainly entitled to have the documents in evidence from which the Admiral draws his conclusions.

Trial Examiner Norwood: Well, you are entitled to it.

10252 Mr. Wooden: If so, you offer them. You are entitled to put them in, if he refreshes his memory from them.

Mr. Leisure: Well, so far, there has been no basis laid to show that he is refreshing his memory.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: Go ahead. On the record.

The Witness: Commission's Exhibit 1384—I will get that, first; 1383 comes right with it—it covers 6,000—the advertisement for 6,000—for bids for 6,000 barrels of cement for the Bureau of Reclamation in Montana, to be opened May 16, 1938; all quotations were invited f.o.b. mill; the point of delivery not revealed.

Commission's Exhibit 1383 contains a list of the various manufacturers to whom this proposal was sent. There were two bids received as indicated by a check marked thereon, the Oregon Portland Cement Company and the Three Forks Portland Cement Company. The award was made to the lowest bidder, the Three Forks Portland Cement Company.

Mr. Leisure: Now, Your Honor—

Mr. Wooden: F.o.b. mill?

The Witness: F.o.b. mill; yes, sir.

10253 Mr. Leisure: The Admiral has read those statements which I think makes this document admissible in evidence, and I think it should be offered before we have similar testimony of that kind. I want to point out that the Admiral is reading from documents, and I think they should be offered. The testimony and the documents are being used against us, and they should be in the record.

Trial Examiner Norwood: It is Counsel's privilege to offer it if he wants to. This witness is refreshing his memory from these official documents.

Mr. Wooden: He was not reading, that was obvious.

Trial Examiner Norwood: And giving us—

Mr. Leisure: It was obvious that he was reading.

Mr. Wooden: To me it was obvious that he was not reading.

Trial Examiner Norwood: I didn't notice that he was reading especially.

Go ahead.

Mr. Leisure: Apparently the character of the testimony shows whether he was reading or not.

Mr. Wooden: Well, compare it with the exhibit and we will see.

By Mr. Wooden:

Q. Will you take up Commission's Exhibit, for identification, 1384?

A. I finished with 1384.

10254 Q. Commission's Exhibits 1385 and 1386.

A. Yes, sir.

Q. And cover them in the same way?

A. Yes, sir.

Mr. Wooden: And let the record show I am submitting to Counsel for Respondents, Exhibits, for identification, 1383 and 1384.

Mr. Leisure: Now, Your Honor, if the Admiral is going through and reading from all these documents in the same way, I object to his proceeding in that way unless the exhibits are offered, and I particularly object to the exhibits being offered until we have the underlying data. We should not be called upon to go to the Admiral's office for it.

Trial Examiner Norwood: Do those documents contain the actual bids?

Mr. Zimmerman: No.

Mr. Wooden: I again say I am not offering them, Your Honor. If the other side wants to offer them, why, I don't know whether I will have any special objection.

Mr. Leisure: I object to the Admiral reading from them until they are offered.

Trial Examiner Norwood: I will ask the Admiral not to read from them but to refresh his memory and give us the information independently.

10255 Mr. Zimmerman: Hay I object to that proceeding, on the ground that there is no showing that the Admiral has any personal recollection about any of them? It isn't a matter of refreshing his recollection at all; it is a matter of reading from papers which have been prepared for the purpose of laying a basis for his testimony.

Trial Examiner Norwood: I don't think that. I think it is a matter of giving you the results of this bidding, with which these papers are connected. It hasn't appeared that these papers are the best evidence of anything.

Mr. Leisure: But it is apparent—

Trial Examiner Norwood: Except as to what the invitations contain.

Mr. Leisure: It is apparent from the record that the

Admiral is reading from underscored or underlined statements in the exhibits as he goes along, and I submit—

The Witness: The quantity.

Mr. Leisure: —I submit the exhibits should be in evidence before he does that.

Trial Examiner Norwood: I shall ask the Admiral to give us the information after refreshing his memory, and to give it to us without reading from the exhibits.

The Witness: Your Honor, I am—

10256 Trial Examiner Norwood: And if the Commission's Counsel wants the exact language of the papers there, he may very easily offer them in evidence—or, rather, Respondents' Counsel.

Mr. Leisure: No, we can't. The underlying data isn't here. We can't offer them in evidence until the underlying data is here. In fact, we object to their being offered until the underlying data on which they are based are introduced.

Trial Examiner Norwood: He can refresh his memory from those notes and tell us.

Mr. Wooden: I understand that the abstracts, and that sort of thing, have been received subject to check with the understanding that they are subject to check with the underlying data, and I am sure the Admiral will provide that underlying data for check purposes.

Mr. Leisure: But we can't cross-examine until we see the data of which these figures are made up from.

Are you willing to defer his cross examination until we have a chance to go to his office and ask him for the underlying data and look at it? If you are, I will not raise any further objection on that point.

Mr. Wooden: I would be willing to do this: To defer his cross examination, so far as that particular phase of his testimony is concerned, based on those particu-

10257 lar documents, but not his entire cross examination. If you want to recall him for that purpose—

Mr. Leisure: That takes care of the underlying data. Now, that does not relieve our objection of the Admiral reading from documents until Counsel has offered them in evidence.

Trial Examiner Norwood: Well, I have asked him not to do that. You must not do that.

Mr. Zimmerman: Perhaps I could be permitted to ask a question with reference to the meaning of certain marks on the exhibits. Would that be agreeable?

Mr. Wooden: Surely. I have no objection.

Examination on Voir Dire by Mr. Zimmerman.

Q. On Commission's Exhibit 1383, Admiral, I notice that you have certain check marks before the names, two names on the first page of that exhibit. What does that indicate?

A. They indicate that of the list of firms to whom this schedule was sent, bids were received from the two firms checked—that is, the Oregon Portland Cement Company and the Three Forks Portland Cement Company.

Q. Now—

A. Bids were received from those two companies.

Q. Is there anything there that would enable you to tell us what the nature of the bids were, the amount
10258 that they bid, and so forth?

A. We have that in that tabulated statement; yes, sir.

Mr. Wooden: That tabulated statement?

The Witness: The result of the bids.

Mr. Wooden: The one that Counsel received the other day?

The Witness: Landick,—have we got it here?

Mr. Zimmerman: Off the record for a moment.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Mr. Zimmerman: That is all I have to ask at the moment, Your Honor.

Trial Examiner Norwood: All right, go ahead.

Mr. Wooden: I understand, Your Honor, there is a tabulation which has been prepared that includes the details of all these cases that the Admiral is now describing.

Trial Examiner Norwood: Yes.

Mr. Wooden: I think it may be just as well, as a matter of fact, to offer that tabulation as a substitute even for these papers that have been marked for identification, and then have them—

The Witness: Or in conjunction with them.

Mr. Wooden: Well, I am not offering them, you understand. But I will offer this as an epitomy of the
10259 material here, and this will be part of the underlying data.

Mr. Zimmerman: Well, I don't think that Counsel should be required to go outside of this hearing room in order to examine and check anything else unless they agree

to do so. I think it is perfectly fine that Mr. Leisure has offered to do that. I think it is fine for him if he wants to do it, but I do not think that any of us should be forced into that situation. I want to cooperate as fully as possible, but there couldn't be anything in this tabulation that would take the place of the invitations to bid, which have been marked of identification here, because this does not contain any of the provisions. This is only a tabulation made from the results of an invitation, and the bids in response thereto.

Trail Examiner Norwood: Well, heretofore, we have had an agreement on that whereby the abstract was received, and the supporting data, including invitations, was made available to the Respondent.

Mr. Wooden: This is not an abstract.

Trial Examiner Norwood: And they might agree now, or they may refuse.

Mr. Zimmerman: This does not pretend to be an abstract of the type we have had before; this is some-
10260 thing entirely different.

Trial Examiner Norwood: I see.

Mr. Zimmerman: This is a tabulation of certain bids, putting in different columns according to the tabulator's system.

Trial Examiner Norwood: I see.

Mr. Zimmerman: But it would not take the place of the things we already have, at all.

Mr. Wooden: I think that—

The Witness: It is the result.

Mr. Wooden: —it might take the place of the papers that have been marked for identification.

Mr. Zimmerman: You do not mean invitations? You mean that the—

Mr. Wooden: Now, I will finish in my own way.

Mr. Zimmerman: All right, thank you.

Mr. Leisure: Well, Mr. Wooden has the data here. I think it should be offered in evidence. These have already been marked. I think they should be offered.

Trial Examiner Norwood: He may offer what he wants to offer.

Mr. MacIntyre: I would like to make this observation, the offers at this point enumerated the offer of cooperation that Mr. Zimmerman and the other Counsel have been so generous with this morning—

10261 Mr. Zimmerman: I withdraw it, now, if it is going to create any—

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Wooden: Will you mark this, please.

(A paper, purporting to be a tabulation, and consisting of three sheets, was marked for identification as Commission's Exhibits 1428-A, 1428-B, and 1428-C.)

Mr. Wooden: I suppose the only thing to do is to go ahead with the papers as the witness started..

By Mr. Wooden:

Q. Where did you leave off?

Mr. Zimmerman: Commission's Exhibit 1384, isn't it?

A. 1383 and 1384.

Q. I think you passed that, if I am not mistaken.

A. Yes, 1383 and 1384.

The next proposal was opened May 5, 1938, and proposals were issued to the list of cement manufacturers shown on Commission's Exhibit No. 1385.

This advertisement invited bids for 2,500 barrels of cement, f.o.b. mills, point of delivery unrevealed, as shown in Commission's Exhibit No. 1386. Bids were
10262 received—the Santa Cruz Portland Cement Company and the Oregon Portland Cement Company.

10263 The Witness: The next proposal was issued—

By Mr. Wooden:

Q. What is the exhibit number?

A. Commission's Exhibit 1387, to the list of cement manufacturers shown thereon. This proposal covers 2418 barrels of cement for delivery in Utah, point of delivery unrevealed. Bids were invited f.o.b. mill. Bids were received from two companies, the Portland Cement Company of Salt Lake City, and the Union Pacific Company of Devil's Slide, Utah.

The award was made to the Union Portland Cement Company, the lowest bidder.

The next proposal was issued under date of May 5, 1938, to the list of cement manufacturers shown on Commission's Exhibit No. 1389, a total of 43 in all. This proposal covered 2160 barrels for delivery in the States of Colorado and Texas. Bids were received from three companies,—the Colorado Portland Cement Company, the Monolith

Portland Mid-West Company, and the United States Portland Cement Company.

The award was made to the Colorado Portland Cement Company, the lowest bidder.

The next proposal—

Q. Was the point of delivery specified there?

10264 A. Delivery was f.o.b. mill.

The next proposal was issued—

Q. How many—pardon me a moment, I want to go back to that last question—how many parties received the invitations, and how many bid?

A. Forty-three companies were invited to bid, and three bids were received, sir.

Q. All right. Will you give that information in each case?

A. Yes, sir; that is that—yes, sir.

Commission's Exhibit No. 1391 contains a list of cement manufacturers, amounting, in all, to 45 companies. This proposal called for bids for 5500 barrels of Portland cement, for delivery in Ohio and West Virginia.

Do you wish me to identify each one of these exhibits all the way through, sir?

Trial Examiner Norwood: Yes.

By Mr. Wooden:

Q. Yes, just like you have been doing.

A. Yes.

The conditions of the bidding are shown in Commission's Exhibit No. 1394.

Commission's Exhibit No. 1392 is a copy of a letter dated May 16, 1938, from the North American Cement Corporation, setting forth the reasons why they

10265 did not bid.

Q. How many received the invitation, and how many bids were received in response to it?

A. Under this particular opening, the proposals were mailed to a total of 45 companies, and no bids were received.

Q. All right. Go ahead with the next one.

Mr. Zimmerman: What was the number of that one?

A. This schedule calls for delivery in Ohio and West Virginia, for cement for delivery—for bids on cement, f.o.b. mill, in three different places.

Q. Specified places?

A. What, sir?
Q. Specified places?
A. The points were not revealed.
Exhibits No. 1393 is a copy of a letter from the Lone Star Cement Corporation, dated May 13, 1938, as to the reasons why they did not bid.
Another bidder, the Lehigh Portland Cement Company, submitted a letter as to the reasons why they did not bid, which is attached to the exhibit shown under the next opening of May 18, 1938.
Trial Examiner Norwood: What number is that; 1394?
The Witness: That opening, the schedule is No. 1399.

10266 By Mr. Wooden:

Q. Could you state how many invitations were sent out to how many people and how many responses there were?
A. Under the opening of May 18 there were 45 companies invited to bid. No bids were received.
The next opening was the same day, May 18, 1938, and called for the delivery of 5,500 barrels of cement for the State of New Jersey.
Exhibit No. 1395 contains a list of 31 companies to whom these proposals were sent inviting proposals. No bids were received.
Exhibit No. 1396 is the letter of the Lehigh Portland Cement Company, dated May 17, 1938, giving the reasons why they did not bid on this schedule, which is Exhibit No. 1399, as well as on schedule opened May 18, 1938.
The next opening, Exhibit No. 1400, is a list of the firms amounting to eleven in all to whom proposals were sent with bids received from three firms; the Colorado Portland Cement Company, the Southwestern Portland Cement Company, the United States Portland Cement Company. This schedule is shown as Exhibit No. 1401, which calls for the delivery of 5,000 barrels of cement for the Bureau of Reclamation in the State of New Mexico, to be opened May 26, 1938.

10267 Exhibit No. 1402 contains a list of seven companies indicating one bid received from the Monolith Portland Cement Company for the cement advertised in Exhibit No. 1403, which covers 2,500 barrels for the State of Wyoming under the opening of June 7, 1938, f.o.b. mill.

Q. Was that Monolith or Monolith Mid-West?

A. That is the Monolith Portland Mid-West Company, of 2931 Blake Street, Denver.

Exhibit No. 1404 is a list of 14 companies to whom the next schedule was issued with bids received from eight companies: The Beaver Portland Cement Company, the Lehigh Portland Cement Company, the Northwestern Portland Cement Company, the Olympic Portland Cement Company, the Oregon Portland Cement Company, the Santa Cruz Portland Cement Company, the Spokane Portland Cement Company, the Superior Portland Cement Company, Inc.

This schedule is shown as Exhibit No. 1405, and invited bids for 2,500 barrels of cement for the Bureau of Reclamation for the State of Washington.

Q. What do you mean, for delivery in the State of Washington?

A. For delivery in the State of Washington. The point of delivery was not revealed.

Bids were invited f.o.b. mill and alternate bids were invited for a larger quantity of 5,800 barrels based on a four-year delivery basis, 2500 barrels being invited
10268 for delivery in one year.

Q. Did Lehigh bid on those two?

A. The who, sir?

Q. Lehigh.

A. The Lehigh Portland Cement Company of 111 West Washington Street, Chicago, were one of the bidders under this schedule.

Q. Do you know whether or not that was on behalf of their Metaline Falls mill in Washington?

A. I do not recollect. I will have—I can ascertain that data, though.

The awards were divided on account of the large quantities involved and made to the Superior Portland Cement Company, the Olympic Portland Cement Company, the Northwestern Portland Cement Company, the Spokane Portland Cement Company, and the Lehigh Portland Cement Company.

Q. You spoke about the large quantity involved there in the dividing of bids in that region. I thought it was only 2500 or 5500 barrels.

A. In this case this large quantity was called for the Coulee Dam.

Q. What was the quantity? Do you consider 5,000 barrels, or thereabouts, a large quantity?

A. This was 2½ million barrels.

Q. I didn't hear that, before.

10269 A. Yes; 2½ million barrels with delivery within one year with alternate bids being invited for 5,800,000 barrels. It was for the Grand Coulee Dam where the quantities were very large.

Q. You didn't give that, before. That was why I called it to your attention.

A. Yes. Exhibit 1406 is a list of six companies to whom proposals were sent for the cement shown on Exhibit 1407. It covered delivery in the State of Utah under the opening of June 16, 1938, for 20,000 barrels.

Bids were received from the Monolith Portland Mid-West Cement Company, the Portland Cement Company, and the Union Cement Company, and all quotations were f. o. b. mill, point of delivery not revealed.

In this particular case the award was not made because the project was not quite ready and the cement prices quoted in that particular case were considered too high.

Mr. Leisure: You called one of them the Portland Cement Company.

Mr. Bond: Of Utah, it is.

Mr. Leisure: Would you tell us which one that is?

The Witness: This is the Portland Cement Company of Utah.

By Mr. Wooden:

Q. Have you the name of the company, the Port-
10270 land Cement Company of Utah?

A. Yes, sir; that is the name of the company, the Portland Cement Company of Utah.

And Commission's Exhibit No. 1408 covers a list of manufacturers to whom schedule 1409 was issued for delivery in the State of Colorado, under the opening of January 17, 1938, of 10,000 barrels, on which three bids, the Colorado Portland Cement Company, the Monolith Portland Mid-West Company and the United States Portland Cement Company submitted bids.

Q. Out of how many concerns that were invited to bid?

A. Out of 17 companies, sir. And the award was made to the United States Portland Cement Company, the lowest bidder. The quotations were based on an f. o. b. mill basis.

Exhibit No. 1410 is a list of 11 companies to whom proposals were sent, as shown on Exhibit No. 1411, for delivery in the State of California, under the opening of June 30, 1938, for 50,000 barrels, under item 1, and 25,000 barrels under item 2. Bids were received from the Beaver Portland Cement Company, the Calaveras Cement Company, the Cowell Portland Cement Company, the Monolith Portland Cement Company, the Oregan Portland Cement Company, the Pacific Portland Cement Company, and the Riverside Cement Company.

Q. Out of how many parties invited to bid?

A. Out of a total of 11 companies. The awards
10271 were made to the Beaver Portland Cement Company, the lowest bidder under item 1, and the Pacific Portland Cement Company, the lowest bidder under item 2. Quotations were f. o. b. mill, the point of delivery not revealed.

Exhibit No. 1412 contains a list of 11 companies to whom proposals shown as Exhibit No. 1413 were mailed. This proposals called for bids for delivery in Nevada under the opening of July 16, 1938, for 1500 barrels under item 1, and 7,000 barrels under item 2. Bids were received from the Calaveras Cement Company, the California Portland Cement Company, the Monolith Portland Cement Company, the Pacific Portland Cement, and the Riverside Company. Five bids were received out of a total of 11 firms invited to bid, on the basis of f. o. b. mill, point of delivery not revealed. The award was made to the Monolith Portland Cement Company, the lowest bidder.

Exhibit No. 1414 contains a list of 16 companies from whom two bids were received, the Oregon Portland Cement Company and the Santa Cruz Portland Cement Company, for the cement shown on Exhibit No. 1415, for delivery in the States of Idaho and Oregon, under the opening of July 7, 1938, of 5,000 barrels under item 1 and 5,000 barrels under item 2.

Q. Is that f. o. b. mill?

A. F. o. b. mill; yes, sir.

The next schedule was opened under date of July
10272 19, 1938, and Exhibit No. 1416 shows a list of 7 companies from whom bids were received, from the Colorado Portland Cement Company, the Monolith Portland Cement Mid-West Company, the United States Portland Cement Company, for 4,000 barrels of cement for de-

livery in the State of Wyoming, bids to be opened on July 19, 1938. The award was made to the Monolith Portland Mid-West Company, the lowest bidder.

Mr. Wooden: There were in that case three bidders out of how many?

The Witness: Out of seven companies.

By Mr. Wooden:

Q. Out of seven companies?

A. Yes, sir.

Trial Examiner Norwood: What was that last exhibit number?

The Reporter: Commission's Exhibit 1417.

Trial Examiner Norwood: All right.

A. (Resumed) Commission's Exhibit 1418 is a list of 15 companies from whom five bids were received, the Olympic Portland Cement Company, the Spokane Portland Cement Company, the Superior Portland Cement Company, the Oregon Portland Cement Company, and the Santa Cruz Portland Cement Company. On 5,000 barrels of cement for delivery in the State of Washington, under the opening of August 8, 1938. No award was made in
10273 this particular case, because error was made by one of the bidders, the Oregon Portland Cement Company, which resulted in the decision to reject all bids, and were re-advertised under the opening of September 7, 1938.

I have two more exhibits that were here—

By Mr. Wooden:

Q. Admiral, I am showing you—

A. Wait a moment.

Q. All right. I thought you were through.

A. There are two more here somewhere.

Q. I think these are one.

A. These are next by dates, but are mixed up in numbering. These are consecutive, showing dates.

Q. Go ahead.

Trial Examiner Norwood: Go ahead.

A. The next schedule called for the opening of September 1, 1938, in Commission's Exhibit 1420, contains the names of six companies to whom proposals were sent. Bids being received from two, the Portland Cement Company of Utah and the Union Portland Cement Company for the cement shown in Commission's Exhibit No. 1421, for 15,000

barrels of cement, under one item, and 15,000 barrels as modified, Portland cement specifications modified, which I won't go into. The exhibit shows the details of it.

10274 This proposal called for delivery in the State of Utah, under the opening of September 1, 1938. The award was made to the Portland Cement Company of Utah, the lowest bidder.

Q. F. o. b. mill?

A. Both quotations f. o. b. mill.

Commission's Exhibit 1422 contains a list of 15 companies to whom proposals were sent for the cement shown on Commission's Exhibit 1423, that is for 5,000 barrels for delivery in the State of Washington, under the opening of September 7, 1938. Bids were received from the Northwestern Portland Cement Company, the Beaver Portland Cement Company, the Superior Portland Cement Company, the Oregon Portland Cement Company, and the Santa Cruz Portland Cement Company.

The award was made to the Oregon Portland Cement Company, the lowest bidder.

Q. F. o. b. mill?

A. F. o. b. mill, point of delivery not revealed.

The next schedule was under the opening of September 22, 1938, to whom proposals were sent to the 13 companies shown on Commission's Exhibit 1424. Of this list bids were received from three companies, the Superior Portland Cement Company, Inc., the Oregon Portland Cement Company, and the Santa Cruz Portland Cement Company, for 40,000 barrels of cement for delivery in the State of Washington. Bids to be opened September 22, 1938.

10275 Award was made to the Oregon Portland Cement Company, the lowest bidder. Quotations were all f. o. b. mill.

Commission's Exhibit 1426 is a list of 16 companies to whom proposals were sent.

Commission's Exhibit 1427, inviting bids for 3,500 barrels of cement, under item 1, and 17,000 barrels under item 2, for delivery in the State of Washington, under the opening of September 26, 1938. Bids were received from five companies, the Northwestern Portland Cement Company, the Beaver Portland Cement Company, the Superior Portland Cement Company, the Oregon Portland Cement Company, and the Santa Cruz Portland Cement Company.

The Award was made to the Northwestern Portland Ce-

ment Company, under item 1, the lowest bidder, but no action as yet has been taken under item 2. The quotations were on the basis of f. o. b. bill.

Q. Is that the last one you have?

A. Yes, sir.

Q. Now, in this last case, Admiral, what concerns to whom the proposal were sent did not bid (showing to the witness a paper marked Commission's Exhibit 1426)?

A. The exhibit, itself, sir, shows the list of the firms to whom—

Trial Examiner Norwood: Just a moment. Don't state that unless you can—unless it is the exact figures
10276 that you can get from the notes.

Mr. Leisure: There is not the slightest difference between that and the reading that has been done by the witness the last 20 minutes.

Trial Examiner Norwood: I think so. He has been referring to the exact figures—

The Witness: This is the list sent—

Trial Examiner Norwood: And the names of the firms, and so on, and the matter of describing the exhibit—

Mr. Leisure: Well, in that connection I would like to move—

Trial Examiner Norwood: —he has not read—

Mr. Leisure: —I would like to make a motion with respect to his testimony—

Trial Examiner Norwood: Let me finish my statement there.

He has not read literally from it. He has made his statement and included these figures which he has gotten from this data, but I do not consider that in a literal sense he was reading from it, but I think he had a right to do what he did, because I observed him very closely.

Now, go ahead.

10277 Mr. Leisure: I think the Admiral himself will be the first to admit that he has underscored these things and has read from them on the record.

Trial Examiner Norwood: Yes.

Mr. Leisure: Now, may I make a motion with respect to that testimony?

Trial Examiner Norwood: Yes, sir.

Mr. Leisure: I would like to move to strike it all out on the ground that it is an effort to get into the record by oral testimony the contents of documents, and the docu-

ments themselves are the best evidence; and on that ground, I move to strike it all out, and I point out that the exhibits themselves would not be admissible in evidence at this time because the supporting data is not even in the court room. So I move now, I move to strike the Admiral's testimony out.

Trial Examiner Norwood: As I understand it, all the data to which the witness has referred is here and available to Respondents; is that right?

Mr. Wooden: I beg your pardon, Your Honor.

Trial Examiner Norwood: Read it.

(Record read.)

Mr. Wooden: All that to which he has referred, yes, I would say, Your Honor.

10278 Mr. Leisure: The bids are not here.

Trial Examiner Norwood: Each one of those?

Mr. Leisure: The bids are not here.

Trial Examiner Norwood: I know.

Mr. Leisure: And he has referred to bids constantly.

Mr. Wooden: I am talking about the exhibits to which he referred.

Mr. McFadden: The basic data.

Mr. Leisure: The basic data.

The Witness: Of course, there is no use disputing that. The bids themselves are not here at this time, but they are produceable and available. That is the idea.

Trial Examiner Norwood: Those are now tendered to the Respondent's attorneys, if they want them?

Mr. Leisure: What is now tendered, please?

Trial Examiner Norwood: These exhibits that the witness referrtd to.

Mr. Wooden: I want to get them straight.

Mr. MacIntyre: As used in refreshing his memory and recollection as to what bids they were.

Mr. Leisure: The ones he has been reading from.

Trial Examiner Norwood: Yes.

Mr. Wooden: The exhibits for identification, 1383 10279 to 1426, is that correct?

Trial Examiner Norwood: Yes.

Mr. Wooden: Your Honor, at this time I am offering exhibits 1383, 1385, 1387, 1389, 1391, 1395, 1400, 1402, 1420, 1422, 1424, and 1426.

Those are, I might say, the lists to whom the proposals were sent and I will ask the Admiral to state before the offer is considered further:

By Mr. Wooden:

Q. To state which other exhibit numbers the exhibits comprising the offer these lists relate to.

Mr. Zimmerman: I didn't quite catch that last statement of Mr. Wooden's.

The Reporter: (Reading.) "Those are, I might say, the lists to whom the proposals were sent and I will ask the Admiral to state before the offer is considered further: To state which other exhibit numbers the exhibits comprising the offer these lists relate to."

A. Exhibit 1383 relates to Exhibit 1384. Exhibit No. 1385 relates to Exhibit No. 1386.

Exhibit No. 1387 relates to Exhibit No. 1388.

By Mr. Wooden:

Q. Now, Admiral, pardon me just a moment. There are some check marks opposite certain names on these exhibits you are referring to. Will you state what those

10280 mean?

A. In all cases the check marks indicate the names of the firms from whom the bids were received.

Q. All right. Now you can go ahead.

Trial Examiner Norwood: Go ahead with the description.

Mr. Zimmerman: May I ask, if the Examiner please, from Mr. Wooden what is the purpose of offering the lists of the firms to whom these invitations were sent? What inference it is that might be drawn from it in support of any charge in the complaint.

Mr. Wooden: First, however, I want to amend the offer to this extent: That I am not offering the names on these various lists that were checked and the meaning of which check mark the Admiral has just testified to.

Mr. Zimmerman: That is to say, you are offering a list of names of manufacturers of cement to whom these invitations were sent and who did not respond with a bid?

Mr. Wooden: Pardon me, Mr. Zimmerman. I was occupied with Mr. MacIntyre.

Mr. Zimmerman: Would you read my statement?

(Statement read as requested.)

Mr. Wooden: Pardon me, Mr. Zimmerman; I am sorry.

Mr. Zimmerman: The Reporter will read it.

10281 Trial Examiner Norwood: Is that right?

Mr. Wooden: I didn't get the question.

(Record read.)

Mr. Wooden: That is exactly right. That is why I am doing it.

Mr. Zimmerman: Now, I would like an answer to my question as to the purpose of that. What does it tend to prove under the complaint?

Mr. Wooden: Well, I don't think we need to go into that at this time, Your Honor.

Mr. Zimmerman: Well, I think we do, because certainly, I am not trying to get any secret—

Mr. Wooden: I don't think there is any secret about it.

Mr. Zimmerman: There certainly couldn't be, but there must appear that there is some relevancy.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

The Witness: Yes, sir. Exhibit 1389 relates to Exhibit 1390.

Exhibit 1391, and the exhibit 1392 and 1393 relate to Exhibit No. 1394.

By Mr. Wooden:

Q. Well, I ask you to confine your statements to
10282 the lists themselves, Admiral. You have gone beyond that.

A. I see.

Q. Yes, 1391 only.

A. Exhibit 1391 relates to 1394.

Exhibit 1395 relates to Exhibit No. 1399.

Exhibit 1400 relates to Exhibit 1401.

Exhibit 1402 relates to Exhibit 1403.

Exhibit 1420 relates to Exhibit 1421.

Exhibit 1422 relates to Exhibit 1423.

Exhibit 1424 relates to Exhibit 1425.

Exhibit 1426 relates to Exhibit 1427.

Mr. Wooden: Now, Your Honor, I am not clear whether I stated that entirely correct for the record, but I want to restate it, that the portions of these exhibits containing these lists of parties to whom the invitations were sent, the offer is confined to those who did not submit bids and not to those who did submit bids.

Trial Examiner Norwood: Yes.

Mr. Leisure: May we see them, please?

Mr. Wooden: Yes (handing the papers referred to to Mr. Leisure).

Trial Examiner Norwood: Those are offered, and the remainder of the exhibits that were referred to by the witness here are tendered?

10283 Mr. Wooden: The remaining exhibits are not offered by Counsel for the Commission.

Trial Examiner Norwood: Are they tendered to the Respondent?

Mr. Wooden: Yes, they are tendered to the Respondent for any use they care to make of them.

Trial Examiner Norwood: Then I shall overrule the motion to strike and will now consider the proffer.

Mr. Leisure: The motion to strike was already overruled. The motion to strike has been already overruled.

Trial Examiner Norwood: I think that I was holding it.

Mr. Leisure: Sir?

Trial Examiner Norwood: I think the record will show that I was holding it to get this information.

Mr. Zimmerman: Now, Your Honor has said—

Trial Examiner Norwood: I make my ruling subject to the condition that these papers either be offered in evidence or furnished to the Respondents, and now that I find out that they were, I make my ruling.

Mr. Leisure: Well, Your Honor, if you are making your ruling on the basis that these papers have been offered to the Respondents, they have not been offered yet. The bids are not here in the courtroom at this moment.

10284 Trial Examiner Norwood: I am not talking about the bids; I am talking about these papers here. The Counsel has made a statement with regard—

Mr. Leisure: The witness is talking about bids, Your Honor.

Mr. Wooden: Everybody understands the bids are not here. Let's make that clear. They are available, and with the Admiral's cooperation, they may be brought here. But I wish to point this out, Your Honor, in that connection: I am not offering anything here now that calls for the production of bids in the form of supporting data. I am offering merely the lists of parties to whom the invitations were sent and who did not bid at all. Now, you can't get bids to support that no-bidding at all.

Mr. Zimmerman: Now, again, I ask what does the Commission's Counsel expect to prove or infer from the fact

that any company received one of these invitations and did not respond?

Mr. Wooden: I don't think we need to go into that, Your Honor. It is a question, of course, involving the whole case of how far Respondents' policies are uniform in declining to sell f.o.b. mill.

Trial Examiner Norwood: As far as I am concerned, its relevancy is apparent.

Mr. Zimmerman: Would Your Honor mind stating
10285 for the record what you deem the relevancy to be? Frankly, I am completely in the dark about that.

Trial Examiner Norwood: Yes. I don't feel it necessary for me to make any explanation of something that is so obvious.

Mr. Zimmerman: Well, again, I ask just as a matter of courtesy, then, that you inform me what the relevancy is. It is not obvious to me at all.

Trial Examiner Norwood: Well, it is not my duty to be informing you.

Mr. Zimmerman: No. I am not asking as a matter of duty. I am asking—

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

10286 Trial Examiner Norwood: Are you ready to go ahead, Mr. Wooden?

Mr. Wooden: Yes.

Trial Examiner Norwood: All right, the hearing will come to order.

Mr. Wooden (Addressing Mr. Leisure): May I have the papers which you were going over this morning?

Trial Examiner Norwood: Any objection to the pending exhibits?

Mr. Leisure: Your Honor, I have an exhibit that Mr. Wooden asked me about this morning. I do not know whether he wants—I am prepared to state my objections if it has been offered in evidence.

Mr. Wooden: I would prefer that it go until Admiral Peoples is through.

Trial Examiner Norwood: Yes, let that go, and take these that were offered this morning, Commission's Exhibits 1383, 1385, and 1387, and so forth.

Mr. Leisure: Have they been offered?

Mr. Wooden: Yes, they have been offered, as stated on

the record. They do not include all of those, however, but specifically exclude some numbers.

The list given me by the Reporter just now of what was offered is Commission's Exhibits 1383, 1385, 1387,
10287 1389, 1391, 1395, 1400, 1402, 140—

Mr. McFadden: Here it is, Mr. Wooden.

Mr. Wooden: Just a list of the exhibits—Commission's Exhibits 1420, 1422, 1424, and 1426.

Trial Examiner Norwood: That is 11 exhibits, is it not?

Mr. Zimmerman: Twelve, I believe—twelve, I make it.

Mr. Wooden: Twelve, I believe.

Trial Examiner Norwood: Go ahead.

Mr. Hershberger: The intervening numbers, as I understand it, you are not offering; is that it?

Mr. Wooden: Yes.

Trial Examiner Norwood: All right, I want to check that.

Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Leisure: May we state our objection, Your Honor?

Trial Examiner Norwood: Certainly.

Mr. Leisure: We object to all of these exhibits being offered at this time, on the ground that they are incompetent, irrelevant, and immaterial, and they contain much hearsay evidence, as far as the Respondents in this case are concerned, and we do not feel that any proper
10288 basis has been laid for their introduction in evidence.

Trial Examiner Norwood: Any further objection?

Mr. Zimmerman: Yes, I want to add to that objection that, with the exception of Commission's Exhibit 1389, which is a list of firms to whom the proposal of May 5, 1938, was sent, none of them seem to in any wise refer to the Respondent Marquette, and as to that one the testimony is that that is connected with and to be considered in connection with Commission's Exhibit 1390. Commission's Exhibit 1390 refers to purchases to be made or proposed to be made in Colorado and Texas. Now, there should be some showing that the Respondent Marquette has some plant so located as to make it possible for it to ship into that territory on transportation charges that would be in any way attractive at all. The fact of the matter is that it never has sold anything in Texas, or in Colorado, because of the fact that they are too far away, freight-wise.

Now, I asked this morning the purpose of offering these things in the record. Certainly nothing could be inferred that would tend to illuminate any issue in the complaint from the fact that an invitation was sent to a mill to bid in territory where it is so far distant that it would be impractical for it to ship.

10289 Mr. Wooden: Your Honor, the Marquette Company was asked to bid f.o.b. mill, as I understand it, for shipment to Colorado or Texas as the case might be, and I don't see what difference it makes on that basis whether they ever shipped there before or not. The government would take care of that.

Mr. Zimmerman: Perhaps we can develop that in the course of the examination but there is no showing at all from which it may be determined that this will eliminate any issue in the complaint.

It is not relevant or material to any issue in the complaint.

Mr. MacIntyre: Let us observe at this point that frequently the Government buys cement for use in construction projects in the Panama Canal Zone and Hawaii and Philippine Islands, for use in those particular places, and it must be said most domestic manufacturers of cement in this country don't normally or regularly do business in those locations, either.

Mr. Zimmerman: I think it should be added the Government does not purchase cement in New England for shipment to Hawaii.

Mr. MacIntyre: I disagree with Mr. Zimmerman on that point. They do purchase cement in New Eng-

10290 land for shipment to the Panama Canal Zone, and other places.

Mr. Zimmerman: It would depend upon the freight rate, wouldn't it?

Mr. MacIntyre: The Government takes care of that, Mr. Zimmerman.

Trial Examiner Norwood: Any further objections to the exhibit?

Mr. Zimmerman: Than I think there is a further objection that it is impossible to draw any inference from the mere sending of an invitation without its appearing of record what the nature of the invitation is.

It is certainly true that these invitations include conditions which go much further than merely asking for a

bid f.o.b. mill and unless and until it does appear of record what the nature of the invitation is and what the conditions are, it is not possible to infer whether a mill can or cannot consistently and practically bid.

Trial Examiner Norwood: Well, I think that this—

Mr. Wooden: I will get to that point in a moment. I was anticipating it, anyway.

Trial Examiner Norwood: The Respondent can show that the mills couldn't bid for one reason or another.

10291 By Mr. Wooden:

Q. Admiral, referring to this series of exhibits for identification running from 1383 to 1426, can you say whether or not the form of invitations in all those cases was the same, or whether it was any different in one case than another.

(CQM. EXS. 1383, 1385, 1387, 1389, 1391, 1395, 1400, 1402, 1420, 1422, 1424, and 1426 were offered and received in evidence.)

Mr. Leisure: Your Honor, I think we are taking up time, needlessly. These invitations would speak for themselves as to whether or not they are different.

Mr. Wooden: They are not in evidence.

Mr. Leisure: Then I object to the Admiral now comparing documents that are not in evidence and telling for the record wherein they differ.

Trial Examiner Norwood: They are documents on which he has based his testimony this morning, from
10292 which he refreshed his recollection, and from which he obtained certain figures.

10293 Mr. Zimmerman: If Counsel and the witness can pick out one example of each form of the information so that we may determine wherein they differ—

The Witness: I think I can straighten that out in a moment.

Mr. Zimmerman: Thank you, sir.

Mr. Wooden: That is what I want him to do.

The Witness: The proposal opened on April 15, and the proposal opened for the Shoshone project are different from all those subsequent thereto in this respect: All proposals after April 15 called for specified quantities, and with the exception of the Shoshone schedule, the points of delivery were not revealed.

By Mr. Wooden:

Q. Well, aside from that—

Mr. Wooden: I might say that those two forms of proposal are already in evidence.

By Mr. Wooden:

Q. But among the subsequent ones are the forms of proposal the same in all cases that you have gone over this morning?

A. Yes, they are.

Mr. Wooden: Then, Your Honor—

Mr. Zimmerman: If the Examiner please, where reference is made to the proposal of April 15, and to
10294 the second one, the dam, the record ought to show the number of the exhibits referred to so that they may be properly identified.

Trial Examiner Norwood: Yes.

Mr. Zimmerman: Now, the April 15th, I believe, was Commission's Exhibit 1339, if I am not mistaken.

Mr. Wooden: There are prior exhibits received; I can't give you the number offhand. I think that is probably right. The exhibits ought to be here. We can have the Reporter check on it.

The Witness: I haven't got the exhibit number.

Mr. Zimmerman: Well, the exhibits, themselves, are here. The exhibits I believe were Commission's Exhibit 1339, for April 15, and the Shoshone dam was Commission's Exhibit 1341, but I think we ought to have them here.

By Mr. Wooden:

Q. When you referred to the bids opened April 15, did you have reference to the invitation, which is in the record as Commission's Exhibit 1339?

A. Yes, sir.

Q. When you had reference to the Shoshone project, did you have reference to the invitation, which is in the record as Commission's Exhibit 1341?

A. Yes, sir.

10295 Q. You had reference to Commission's Exhibit 1341, for identification (indicating)?

A. Yes, sir.

Q. Tell us again what Commission's Exhibit 1381 is.

A. Commission's Exhibit 1381 covered invitation for proposals for 250,000 barrels of cement under schedule 1

for delivery at points unrevealed in California under the opening of May 12, 1938.

Q. Now, all these three forms that we have been just referring to, are they all different from each other?

A. Yes, sir.

Q. And also different, are they, from the forms which are included in Commission's Exhibits 1383 to 1426, inclusive?

A. Exhibit 1339 and Exhibit 1341 are different from all of the other exhibits. Exhibit 1381 is the same as—

Q. The same as this group, beginning Commission's Exhibit 1383?

A. Exactly.

Q. And running to Commission's Exhibit 1426?

A. Yes, sir.

Q. The same as?

A. Yes, part of the same group.

Mr. Wooden: Well, I will offer Commission's Exhibit 1341. It does not seem to have been received as yet, and I won't need to do what I intended to do, namely,
10296 offer a sample from among these. Apparently we already have a sample.

The Witness: Yes, sir.

By Mr. Wooden:

Q. Commission's Exhibit 1381 is a sample of which all of the other invitations from Commission's Exhibit 1383 to 1426 are duplicates; is that right?

A. Yes, sir.

(COM. EX. 1341 was offered and received in evidence.)

Q. (Showing paper to witness) Admiral, I show you a tabulation, marked Commission's Exhibit 1428-A to C, inclusive; will you state just what that is, and how it was prepared?

A. Exhibit 1428-A and 1428-B and 1428-C is a tabulation of all bids received subsequent to the opening of April 15, 1938. This summary or tabulation shows the re-
10297 sult of the bidding on the various schedules included in the exhibits which were listed this morning.

Q. Commission's Exhibits 1383 to 1426?

A. Yes, sir.

Q. Is that right?

A. 1383 to 1426.

Q. Was that tabulation prepared under your direction?

A. Yes, sir—to 1417—it contained—

Q. Are you willing to vouch for its accuracy?

A. I am, I am, sir.

Mr. Wooden: Your Honor, I do not wish to offer the exhibits, merely have it numbered for identification and submit it to Counsel for Respondents.

Your Honor will observe that I have not offered anything which calls for the production of basic data in the form of the bids themselves.

Trial Examiner Norwood: Yes.

Mr. Leisure: I do not agree with that statement, Your Honor. I don't know whether it requires a statement from me—

Trial Examiner Norwood: I took that view; I admitted it.

Mr. Leisure: It is our contention, of course, that the entire testimony of the Admiral this morning based upon data which was supported by figures not—

10298 Trial Examiner Norwood: As I view it, Counsel is bringing out certain facts here. We have plenty of bids, and plenty of abstracts in the record, and this witness is introduced to show certain general facts about the number of biddings, and I feel that we have been within the law in the procedure.

All this data is open to Respondents for checking, and for replying to.

Mr. Leisure: It is open to us, Your Honor, in other departments—other buildings—they are not here in court, as I understand it. The bids have never been produced.

Trial Examiner Norwood: Some of it is here, some of the data.

Mr. Wooden: I have not asked him to state what the bid prices were.

Trial Examiner Norwood: He has not told us what the bids were at all; he has just given us certain features—

Mr. Leisure: Well, would this be an appropriate time to find out whether or not the letters, in addition to the bids, have been produced here this morning? I think the Admiral yesterday was going to produce them—

Mr. Wooden: I see some of them among the

10299 papers which have been marked for identification in this group, Commission's Exhibits 1383 to 1426, but I did not offer those.

Trial Examiner Norwood: They are not included in the ones we received.

Mr. Wooden: Nor in the offer.

Mr. Leisure: I am speaking of the opening on April 15, the letters referring to that opening. I am not—I have not read the record as of yesterday. It was my understanding that the Admiral was going to produce those letters today.

I may be mistaken.

10300 Mr. MacIntyre: If your Honor please, I have understood from the witness and from his assistants who are here that not only the original bids with respect to the April 15 opening, but the letter to which Mr. Leisure has referred are on the table here for examination by the Respondents' Counsel and have been all day.

Mr. Leisure: We would have saved a lot of time if we had heard that statement 10 minutes ago.

Mr. Wooden: When I made the statement this morning I confined it to the bids testified about this morning, then under discussion.

I have nothing further with the witness.

Trial Examiner Norwood: You may examine.

Mr. Leisure: Could we see the letters that have been produced?

Trial Examiner Norwood: Nothing has come up with respect to the letters except the mentioning of their existence, has there?

Mr. MacIntyre: That is all.

Mr. Leisure: The proposal has been offered in evidence and it was my understanding yesterday that the Admiral was going to produce the letter when we did not make objection to the proposal.

Trial Examiner Norwood: That is, the letters

10301 from the companies explaining why they did not submit bids, is that right?

Mr. Leisure: Yes.

Mr. Wooden: I have no objection to their production here for their examination, but I gave notice day before yesterday and I repeat it now that I shall object to any proposed introduction of those self-serving declarations.

Trial Examiner Norwood: Well, that is another hill.

Mr. Wooden: Maybe we haven't come to that bridge, yet.

Mr. Leisure: I suppose the information that Mr. Wooden has brought out, that may be called self-serving on his part, but they are part of the picture and since they are part of it, in making a study of this case we feel Your Honor should have the letters as well as the proposals.

Mr. Wooden: If Respondents want to come in and take the stand and testify why they didn't submit bids and subject themselves to cross examination, all right.

Trial Examiner Norwood: They haven't been offered, yet. Let the Respondents see them and if they offer them we will take that up.

At this point I will state witness G. C. Garity of
10302 the Tennessee Valley Association has forwarded to me certain data that was promised Counsel for the Marquette Company.

Mr. Zimmerman: I have received a copy of that, Your Honor.

I have no doubt Mr. Wooden has, but it came to me since I arrived here and I have no opportunity to go over it, and I think we can take it up when we have disposed of the pending matters.

Trial Examiner Norwood: Here is the data, and since Mr. Garity's letter enumerates the documents that he is furnishing to you, and which I now give you—

Mr. Zimmerman: I have a copy.

Trial Examiner Norwood: You have a copy?

Mr. Zimmerman: Yes. He sent me a duplicate.

Trial Examiner Norwood: I will have the documents put on the record to show what documents were furnished, inasmuch as the request was on the record.

10303 Mr. Zimmerman: Well, I thought you might, if you don't mind, let it go until we have disposed of this here, because I will probably want to consider it with Mr. Wooden, and perhaps we can just make a brief statement or resume of it for the record, and it all ought to go in at once.

Trial Examiner Norwood: All right.

Mr. Zimmerman: He has a copy and I have a copy, and I can confer with him.

That is agreeable, isn't it?

Mr. Wooden: Yes.

Trial Examiner Norwood: Cross examination.

Cross Examination by Mr. Leisure.

Q. Admiral Peoples, are these the letters that I have just referred to, the ones that were received with respect to the opening of the bids that we have been discussing?

A. They are the seven letters received giving reasons why the bids were not submitted, sir.

Q. And were those all of the letters that you received?

A. Yes, they were; yes, sir.

Q. They were the ones that were referred to yesterday, I believe?

A. Exactly, exactly, in that separate list.

Mr. Leisure: Your Honor, I ask permission to
10304 have them marked for identification.

Trial Examiner Norwood: Yes, mark them as Respondents' Exhibits, for identification, beginning with the No. 36.

(The documents referred to were thereupon marked for identification "Respondents' Exhibits 36, 37, 38-A, 38-B, 39-A, 39-B, 40, 41, 42-A, 42-B, 42-C, 43-A, 43-B, 43-C, and 44-A, 44-B, 44-C.")

By Mr. Leisure:

Q. I will show you a group of exhibits that I now hold in my hand, that you have turned over to me, consisting of seven letters, and which the Reporter has numbered 36 through to 44-C, inclusive, Respondents' exhibits, and again I ask you if that is all of the letters you received, and the reason I am asking the question the second time, Admiral Peoples, is that on page 10038 of the record yesterday you stated that there were eight companies, and I am wondering if we are short a letter?

A. No, I think—

Q. Would you like to see your testimony (indicating)?

A. No, sir. There is seven. What we were talking about yesterday was seven manufacturers who submitted no bids but gave reasons for modifying, and these are the seven letters (indicating).

Q. You have named eight. You named eight yesterday.

10305 A. Oh, wait a minute. Wait a moment. That "eight" refers to—that "eight" refers to something else. The "eight" refers to the fact that of the 24 bids received, there were eight firms who had so qualified their bids as to make them inacceptable. That is what the figure "eight" refers to.

Mr. Zimmerman: Which letters is he referring to?

The Witness: Now, the letters, the seven letters are here. The figure "eight" refers to something entirely different. It refers to the fact that of the—

By Mr. Leisure:

Q. I wonder if we can get at it this way: Would you tell us again what companies there were that so qualified their bids as to make them not acceptable?

A. The Aetna Portland Cement Company, Calaveras Cement Company, the California Portland Cement Company, the Pacific Portland Cement Company, the Riverside Cement Company, the Southern States Portland Cement Company, the Southwestern Portland Cement Company, and the Marquette Cement Manufacturing Company.

Q. Then, if that is a separate list, what is the list that you have turned over to us, the seven?

A. These are the letters that were submitted by firms who were invited to bid—that is, included in the lists, included in the 109 firms who were invited to bid but who gave reasons in letter form for not bidding.

10306 Q. Did you receive any letters in this group of either bidders who submitted qualifying bids? Did you receive any letters with respect to the qualified bids or explaining why they qualified?

A. I have here all of the 24 bids received, and included in the bids in some cases are accompanied by letters giving the reasons why—I would rather not—the bid, but giving also—explaining their position, explaining the modifications that they submitted, and so forth. These are the original bids (indicating).

Mr. McFadden: All right, we would like to inspect them.

The Witness: There are a great many of them.

By Mr. Leisure:

Q. Explaining the qualifications?

A. Yes, sir.

Q. In some instances?

A. Yes, sir.

Mr. Leisure: I do not want to spend time on this, Commission's Exhibit 1428-A, unnecessarily. May I ask Mr. Wooden whether or not he intends to offer it in evidence after Admiral Peoples leaves the stand?

Mr. Wooden: No, I do not.

Mr. Leisure: Then, I will not spend time on it.

By Mr. Leisure:

10307 Q. Admiral Peoples, you pointed out on your direct testimony that the Procurement Division of the Treasury Department in making purchases or contracts for supplies is required to act in conformity with Statute 3709; is that a correct statement?

A. Yes, sir.

Q. Now, that statute, Admiral, simply provides you must advertise, and the practice is to advertise, for the purpose of getting the lowest bid,—that is the practice, is it not?

A. The statute requires advertisement.

Q. Yes.

A. And there is a long line of Comptroller General's decisions, and decisions to the Attorney General, to the effect that the purpose of the advertisement is to ascertain the lowest responsible bidder, and when so ascertained that the award must be made to him.

Q. Precisely.

A. Yes, sir.

Q. And the statute, as you understand it, is for—that is one of the purposes, at least, of the statute—to get—

A. To get competition.

Q. Yes.

A. Yes, sir.

Q. And to get the lowest purchase price for the Government, and to give equal opportunity to various bidders to bid?

10308 A. Exactly so.

Q. In fact, that is why you advertise?

A. Exactly so.

Q. And that is why you sent the invitations to various people to give the various manufacturers the equal opportunity to bid, if they choose to do so?

A. Precisely.

Q. Now, Admiral, without confining yourself to cement specifically, but in your purchases of any other products on a specific job, how do you determine who is the lowest responsible bidder?

A. Well, it is a simple procedure,—the public advertisement is issued, the proposals are received in sealed form, publicly opened, tabulated, and you then and there, when an appropriate time has passed, you find from the bids submitted which is the lowest responsible bidder—

that is, the bid that has a bid bond submitted with it, conforms to the conditions of the advertisement, and so forth.

Q. But if it were an f.o.b. mill bid, you have not finished with just opening the bids?

A. You have—

Q. —you are interested in seeing how cheaply you can buy for the Government, are you not, Admiral Peoples?

A. You have, in the case of an f.o.b. mill bid, the freight from the mill to the point of destination, Navy
10309 yard, or arsenal, or project, as the case may be; is added to the various bids to determine which is then the lowest cost to the Government.

10310 Q. And that is the thing that you are interested in, the lowest laid down price to the Government?

A. Yes, sir.

Q. It might be that some f. o. b. mill bid was lower than another, but would not give you the lowest laid down price.

A. At point of destination; exactly, sir.

Q. And you would feel, under the statute, that you would have to accept the bid that would give you the lowest laid down price, isn't that so?

A. Exactly, sir.

As I testified day before yesterday, oftentimes bids are invited both ways for the same commodity; on the one basis, f. o. b. bid, on the alternate bid, on the same item delivered at destination, and then the freight rates are added to the first bids and if they are less than those under the alternate bid the lowest under the first condition is accepted.

Otherwise, if the lowest be higher than the lowest of the alternate, the alternate is accepted. It is the lowest out of pocket bid.

Q. Cost to the Government?

A. Yes, sir.

Q. Just to illustrate that one step further, Admiral: Suppose you had an f. o. b. mill bid on 10,000 barrels of cement and there were three manufacturers who
10311 submitted f. o. b. mill bids; let us say one for $1.50 per barrel, another for $1.75, and a third for $2.00. The man who bid the $1.50 f. o. b. mill, when you opened the bids, would you make the award on the basis of that bid alone?

A. No, not necessarily. It would depend on what the freight rates were if added to those mill prices to the point

where the cement were to be used, or, if, on the other hand, the point where the cement was not to be used was not known at that particular time and it was regarded as a low bid, it would be accepted and the shipment authorized afterward.

Q. But is it or is it not true, Admiral, that if the laid down price to the Government of the $1.50 bid plus the freight came to a higher rate or a higher price than the $1.75 or the $2.00 bid you would feel you had to accept the one which made the lowest laid down price to the Government, under the statute?

A. Yes. It is the cost from mill plus freight rate to the using point.

If the $1.75 bid plus freight to the using point was less than the $1.50 price plus freight to the destination, the $1.75 rate, of course, would be the cheapest for the Government to accept.

Q. You mentioned today and you mentioned yesterday that when you advertised in this way it was an effort
10312 to get competition, is that right?

A. I didn't get your question.

Q. You mentioned yesterday that when you advertised in this way it was an effort to get competition?

A. In an effort to get country-wide competition; exactly, yes, sir.

Q. Were you interested in stimulating and getting competition, Admiral, or were you interested in getting, under the statutes, the lowest price produced by competition.

A. Both. We were interested primarily in getting competition.

Q. I see.

A. Yes.

Q. You were interested primarily in getting competition?

A. Yes.

Q. Can you show me any authority under the statute for your being authorized to try to stimulate competition rather than trying to get the lowest purchase price?

A. Why, it is purely an administrative question. The idea of the statute is to get competition and to ascertain the lowest cost of an article to the government.

Q. Why did you want—

A. And the method followed—the method followed—

Q. Excuse me.

A. —Had that purpose in view, sir.

Q. Why did you want to get competition? Wasn't
10313 it in order to get the lowest price available?

A. In order—we tried to get competition in order to get away from the practice which had been followed up to that time of having nothing but identical bids to go on, sir.

Q. Now—

A. Yes.

Q. Were you interested in the question of identical bids, or were you interested in trying to get the lowest price you could for the Government when you advertised?

A. We were interested in breaking up the system of identical bidding because from the viewpoint of the statute as we interpret it, the result of the advertisement—the advertisement did not result in ascertaining who was the lowest responsible bidder. They were tied bids in all cases. The prices were the same in all cases. The award, of course, had to be drawn by lot.

Q. Now, you told us yesterday that you advertised and you did it under the authority of the specific statute, namely, 3709?

A. Exactly.

Q. Which authorized you to advertise for the purpose of getting the lowest prices. Can you refer me to any authority that allows you to spend government money for the purpose of advertising in order to break up identical bids?

10314 A. Why, the requirements of good administration alone.

Q. That doesn't answer my question. Will you refer me to any statute—

A. In my opinion, it does.

10316 Q. Well, now, I take it, from what you have al-
10317 ready said, Admiral, that you feel that when the bids are identical, that they are not competitive?

A. I think so, yes, I do.

Q. Well, now, suppose you had three competing sellers, and "A" bid $1.50 a barrel for cement and "B" bid $1.75, and "C" bid $2.00, would you feel that there is competition, and that you would be authorized under the statute to let it to the lowest bid?

10318 A. The delivered price?

By Mr. Leisure:

Q. Yes.

A. Where three bids are received, we would consider them as the result of competition, and make the award to the lowest bidder.

Q. The lowest one?

A. Yes.

10319 Q. And you would make the award to the one that bid $1.50?

A. $1.50 per barrel; yes, sir.

Q. And you would feel that those were competitive bids?

A. I would, yes.

Q. Now, suppose, Admiral, that "B" and "C" dropped their prices from $1.75 and $2 to $1.50; they all submitted the bid at $1.50, would you feel, then, that they were not competitive?

A. If the bids were identical, in that event—the three bids would be identical?

Q. Yes. "B" dropped his price to $1.50, and "C" dropped his price to $1.50.

A. Yes, sir.

Q. Would you feel that they were not competitive bids?

A. I would, sir.

Q. Very good.

Now, isn't it the purpose, Admiral, in your opinion, under the statute, to get the lowest available price?

10320 Haven't you said so, yourself?

A. To get the—it is to obtain the lowest available price, the lowest cost at which the material can be purchased.

Q. Can't you conceive it is possible to have several bidders quoting the lowest price available?

A. Bidding all the same?

Q. Yes.

A. It may so happen.

10321 Q. We are agreed on this, aren't we, Admiral, that it is your purpose, under your statute, to try to get a price as low as possible, to get the lowest available prices when you purchase, using public funds on behalf of the Government?

A. Not—yes; not only with respect to cement, but all other commodities.

Q. Yes. Do you feel that there can be only one man

who has the monopoly on the lowest available price? Don't you feel that several men might be able to quote the lowest available price to you on a given commodity?

Mr. Wooden: Again I ask it be specified if it be delivered or—

By Mr. Leisure:

Q. Destination price, I am talking about.

A. That is, if I understand the question correctly, that one man may have a monopoly?

Q. Yes. You do not feel, do you, that one man has a monopoly on the lowest prices that are available in
10322 any given market?

A. All you can tell is what the result of the bids may indicate.

Q. You understand what I mean by the word "monopoly"; that one man is the only one allowed to bid the lowest price in the available market.

Mr. MacIntyre: Off the record.

I would like to ask Mr. Leisure a question, there.

Mr. Leisure: I do not yield to the question here. I would rather not be interrupted.

Mr. MacIntyre: Pardon me.

A. It is difficult for me to understand where any firm would have a monopoly of the lowest available price. He may ask, I imagine, possibly through superior producing facilities, nearest location, willingness to take business under conditions cheaper than that of a competitor, varying market conditions, and the law of supply and demand come in, yes; under certain conditions that might be so.

Q. But if another manufacturer were able to come in and meet his prices you would feel that that was all right, wouldn't you?

A. (No response.)

Q. If another manufacturer were able to make prices just as cheap as the ones he made?

A. If he could make them just as cheaply, he
10323 could make them cheaper, might force the first competitor to put in a still lower price.

Q. What has been the—

A. The ordinary principle—the ordinary principle of competition would tend to that, in no time, in short order.

Q. What has been your business experience, Admiral? Have you ever been a manufacturer?

A. No; I have been a naval officer all my life, sir.

Q. You have never had the problems of meeting a pay roll and manufacturing an article?

A. No, sir.

Q. Now, can't you conceivably—

A. I have been—I know a great deal about the manufacturing business, in so far as the manufacturers of products are concerned in Navy yards, but it does not enter into the cement question at all.

Q. Can't you conceive of a situation in which one bidder bids at the $1.50 price which I gave you, the destination price, and if it is a standard product can't you conceive of other manufacturers being able to meet that price and bid that low also?

A. It has been my experience, sir—yes. It has been my experience that when they meet the price in one instance they will go below it in the second instance, and the first man who had the so-called monopoly of it will meet 10324 that competition and still bid lower.

Mr. Wooden: Are you referring to cement now?

The Witness: Yes—ought to—or any commodity.

Mr. Wooden: Any commodity?

The Witness: Yes.

By Mr. Leisure:

Q. But you will conceive that there is some bottom point, otherwise we would reach the point where we would be giving cement away, would we not?

Mr. Wooden: Ordinary cost.

Mr. Leisure: Let us not have that—

A. Ordinary market conditions take care of a thing like that, sir.

By Mr. Leisure:

Q. Now, on that subject, did you find identical bids, or have you found identical bids in other commodities than cement, where there are standard products?

A. Oh, yes, a great many.

Q. There are a great many of them, are there not, Admiral?

A. Yes, a great many.

Q. Do you recall—I will not spend much time on it—do you recall, offhand, any of them—of the group?

A. Oh, there are a good many,—steel, certain kinds of

piping, paper cups, miscroscopes, drugs of different kinds—there is a long list.

10327 Q. Admiral, on Commission's Exhibit 1418, which has not been received in evidence but which has been marked for identification, you gave us a list—rather, there is a list attached of manufacturers to whom you sent—

A. The proposals.

Q. The invitations or proposals?

A. Yes, sir.

10329 (COM. EX. 1418 was offered and received in evidence.)

Mr. Wooden: I should like to have the Admiral state, as he did in other cases, to what exhibit for identification Commission's Exhibit 1418 relates.

The Witness: Exhibit 1418 relates to Exhibit 1419.

10330 Q. Admiral, as to those, I think you told us a number of manufacturers ignored the bids, is that correct?

A. Could I see that, sir? That is the list of 15 bids, is it not?

Q. I am not referring specifically to this one list; as to all of these invitations that were sent out.

A. Either igorned or there was no response to them. In that particular case there were bids received from five of the 15 companies to whom proposals were sent.

Q. And on looking over these I notice that listed as one of those to whom you sent invitations is a Mr. H. H. Newell, Secretary to Congressman Peterson of Florida. You didn't expect a bid from him?

A. No. These circulars are public to anybody who wants them.

10331 In that particular case there must have been a special request for that. Why, I don't know. They are public property; anybody can get them.

Q. Was not this submitted as a list of companies or manufacturers who failed to bid?

A. Well, it was sent out—the 15 proposals were sent out to the firms and people listed on that list, sir. He may have made a special request to be furnished with that proposal to furnish it over to some company he wanted to have bid.

Q. He is on this list and that is why I am calling attention to it.

A. I see.

Q. And also on the same list there is a Pacific Builder & Engineer, Arcade Square, Seattle, Washington; do you know whether that is a trade paper or cement manufacturer?

A. I do not, no, sir, but being public property he is entitled to it.

Q. Then this is not a list of cement companies.

A. The lists, by the names listed on there indicate exactly what they are.

Q. Well, what is the Pacific Builder & Engineer, for instance?

A. Whether he is a manufacturer or a dealer, I do not know, sir.

10332 Q. But you wouldn't consider he ignored the invitation if he does not manufacture cement and did not submit a bid.

A. Not necessarily, no.

Q. You wouldn't expect him to submit a bid if he doesn't manufacture cement?

A. He may have been an agent for some other cement company. I don't know, sir.

Q. Do not the same considerations apply which I have just pointed out in Commission's Exhibit 1418 to 1422?

A. On that particular case, sir, there was a question as to the consideration of a special freight rate under that special opening of August 8, which, plus an error on the bid of one bidder; that is, the Oregon Portland Cement Company; resulted in a decision to reject all bids and they were re-advertised and new bids were opened on September 7.

Q. You just read from a note, Admiral. Where did the material come from that you read?

A. What, sir?

Q. You just read from a note. Where did that material come from?

A. These are notes I prepared in connection to identifying the exhibit which you mentioned.

Q. But you didn't get that from this exhibit, did you?

A. Yes—oh, you mean with respect—

10333 Q. The statement you just read.

A. About the errors in the bid? No.

Q. Where did you get that?

A. I got that from the note made about the bid itself, sir.

10334 Q. And who prepared that for you?

(Witness has been referring to Commission's Exhibit 1422.)

A. Well, this is a part of the records of the office as to the result—

Q. I understand that—

A. —of this particular thing.

Q. I want to know who prepared this for you.

A. Mr. Landick did in this particular case; he is right here and can identify it.

Q. Now, I have called your attention to Commission's Exhibit 1422. I want to ask you whether or not the same considerations apply to Commission's Exhibit 1400?

A. I don't know—if you let me see 1400, sir?

Q. I will hand it to you. Suppose I strike 1400, and take Commission's Exhibit 1426 (handing paper to witness).

A. Do I understand the question now, sir, that you are referring to the names?

Q. The three bottom ones.

A. H. H. Newell.

Q. There are three on the bottom—

A. Yes.

Q. —which do not purport to be manufacturers.

A. Yes. The Pacific Builder & Engineer, which is the name of a trade paper published in Seattle; Mr.

10335 Marshall H. Hartmand; I don't know who he is.

Q. So the same considerations would apply to that?

A. Just exactly.

Q. In giving the group of companies you sent these out to I think you testified this morning, by number. Can you tell us any reason why in Commission's Exhibit 1416 the Colorado Company was printed twice, and the Monolith Company was printed twice, on the same list?

A. Yes, sir; because they are different offices of the same company. The Colorado Portland Cement Company, —one proposal was sent to their Denver, Col., office, a copy of the same proposal was sent to the same firm at their Betcher—the City of Betcher, Col.

The same thing applies to the Monolith Portland Mid-West Company; one proposal going to the Denver, Col., office, the other going to their office at Laramie, Wyoming.

Q. But if they are the same corporations you would not expect separate bids?

A. No, that's true.

Q. From each office, would you?

A. No, sir; no, sir; oh, no; oh, no, because if two bids were submitted by the same firm they would have been rejected, one bid only was wanted.

Q. Now, without taking time on it, isn't that one of several of these lists that you have named?

10336 A. It is.

Q. That you have named the same company several times?

A. All the way through, gentlemen; we have tried to list them all the way through, and each list shows the address and the office of the firm to whom sent.

Q. But it does not show that they are separate corporations?

A. No, sir.

Mr. Wooden: I am perfectly willing, Your Honor, to further limit the offer without those lists, to confine it to manufacturers of cement whether Respondents or not, or manufacturers' representatives, of course.

By Mr. Leisure:

Q. You were not laying any emphasis on the fact as stated this morning that a certain number of invitations went out and a certain number of bids came back? Do you understand what I mean?

A. In those cases that were offered since the Shoshone project on, no, no particular emphasis there. The emphasis of the intention of the list is to show the effort that was made to get as many bids as possible, and in each particular instance I have stated; and the record will show the names of the bids, the names of the firms who submitted bids.

Q. All right. And you are laying no emphasis on the fact that a certain number of invitations were sent out and a certain number ignored, as you said?

10337 A. Not particular—

Q. Yesterday.

A. Oh, not particularly, because in nearly all the cases received what we considered satisfactory competition and awarded the contracts.

Q. Now, when you said that some of them ignored the invitation, did you include in that group those who sent you letters explaining why they didn't bid?

A. Now, which opening are we talking about, sir? That April 15th?

Q. Let's start in at the beginning.

A. That April 15th opening:

(The witness examines papers.)

No, there we gave a list of the 109 manufacturers to whom the proposals were sent, the 24 manufacturers from whom bids were received, eight of whom were—eight of which, rather, were non-acceptable on account of the conditions laid down, the seven manufacturers who submitted letters giving the reasons why they could not bid, the 16 manufacturers who complied in all respects with the invitation, and the eight manufacturers who so qualified their bids as to make them inacceptable.

Q. We have already pointed out certain people who were not included in that number, people who are not manufacturers and certain manufacturers have been
10338 named two or three times on the same list; isn't that true, Admiral?

Mr. Wooden: Is that the same list?

The Witness: What?

Mr. Wooden: Is that the same list?

The Witness: No. No, I did not, Mr. Leisure.

By Mr. Leisure:

Q. Is that a different list?

A. Oh, yes, entirely different list.

Q. Have you checked that list to find out whether the same condition prevails in it as prevailed in the other list?

A. No, I have not, but the lists, I think, will show for themselves.

Q. Are you looking at Commission's Exhibit 1340, Admiral? Is that the exhibit you are looking at?

A. We were both—I thought we agreed that that pertained to the opening of April 15th.

Q. That is right.

A. Didn't we? Yes.

Mr. MacIntyre: If Your Honor please, Mr. Leisure is invited to point out any such condition in this that he has noted at this time, if he cares to do so.

The Witness: Oh, in many cases there proposals were sent to different offices.

By Mr. Leisure:

Q. Just as in the other case?

10339 A. Exactly. In many cases they were different offices. We didn't know which offices had the control of the bidding, which one would bid for what.

Q. Now, Admiral, I notice in this Commission's Exhibit 1340, which is the mailing list for the proposal issued March 30th—

A. Yes, sir.

Q. —1938, containing 109 names—

A. Yes, sir.

Q. —you have listed there on page 3 the International Cement Corporation. You also listed nine separate Lone Star companies.

A. Yes, sir. Now, you take the Lone Star Company—I just happen to know that some of their bids would come in for the Alabama; they could bid in the Alabama area. The Indiana—the Lone Star Company of Indiana would cover that zone. The Lone Star Company of Kansas would cover Kansas. The Lone Company of Louisiana would cover New Orleans—rather, Louisiana. The Lone Star Company of New York, that same thing applies. That same thing applies, sir, all the way through.

Q. And, as you have already said—

A. And if a bid came in from the Lone Star Company of Indiana covering only deliveries in Indiana, and a bid from them covering only New York, and a bid from

10340 them covering only Texas, and a bid from them covering Alabama, each and every one of those bids would have been received.

Q. Well, you wouldn't expect several bids from the same company, would you?

A. Not on the same place, no, but the Lone Star Company of Indiana, a bid for Indiana area would be considered as in conjunction with a bid from the Lone Star Company of Texas covering bids in Texas, but two bids, one from their Texas office and one from their Kansas office for the same zone, no, that wouldn't be considered; no, sir.

Q. But they are listed in these ten companies as if they were separate corporations, are they not?

A. Well, we don't know whether they are or not, sir. And, of course, there are different zones that are covered, and in that particular proposal of April 15, there were

zones in Texas and there were zones in Indiana, and there were zones in every State of the Union, and we were endeavoring to get as much competition as we possibly could, and as wide as we could. I think in a number of cases bids have come in from, yes, under that particular opening; for instance, on zone 2-A, the Huron, to illustrate that point—the Huron Portland Cement Company submitted from Oswego, N. Y., submitted a bid in zone 2-B. The Huron Portland Cement Company of Buffalo, N. Y., submitted a bid. Both bids were considered, but they are different on different zones.

10341 Q. Exactly.

A. Two bids.

Q. They were the same company?

A. Yes, sir.

Q. Now, will you look at the same list on page 2? You have listed as numbers 21 and 22 the Edison Cement Corporation, and the Edison Portland Cement Company.

A. Yes, sir.

Q. Now, do you or do you not know that that is a single corporation?

A. I do not, sir.

Mr. MacIntyre: If Your Honor please, may we ask Mr. Leisure if it is the same corporation?

Mr. Leisure: I want to know why the witness has listed them separately. I am asking the witness to tell us.

Mr. Wooden: He answered.

By Mr. Leisure:

Q. Now, on page 4 you have listed as No. 55 the Long Horn Portland Cement Company, and on page 8, as No. 83, you have the San Antonio Portland Cement Company.

A. Yes, sir.

10342 Q. Do you know whether or not they are both the same company?

A. I do not, sir.

Q. The same is true on page 4 as to invitations sent to the Louisville Cement Corporation and No. 56, the Louisville Cement Company. Do you know whether they are the same company or not?

A. I do not, sir. The proposals were sent to three fifteen Guthrie, Louisville, Kentucky.

Another to "Speed", Clark County, Indiana.

Another to the Louisville Company, New York, Inc.,

sent to Akron, New York, but whether they are the same company, I do not know, sir.

Q. In view of that fact, Admiral Peoples, does anything turn on the list of manufacturers which you say you sent invitations to and you received a certain number of replies in return? Does anything turn on those numbers?

A. The purpose of showing the list is to show—we tried to cover the cement field completely all over the United States, but by each and every office of these different companies listed.

Q. On 86, on page 6, an A. G. Snyder Limestone Company at Rosedale, New York. Do you know whether or not that is a manufacturer of cement?

A. It is the A. G. Snyder Limestone & Cement
10343 Company, Mr. Leisure.

Q. You do not know whether it is a manufacturer?

A. No, sir; I do not.

Q. And if it is not a manufacturer of cement you would not have expected it to comply with your bid?

A. We didn't know. We had to find out—

Q. I say, if it were not a manufacturer of cement you would not have expected any reply?

A. Unless they had control over a mill in some way or another; no.

Q. You said this morning about 95 per cent of the cement bought by the Procurement Division in the last six months was at identical delivered prices?

A. Approximately 95 per cent, yes, sir.

Q. Did you take into consideration the use of any control clause when you used that term of "identical delivered prices"?

A. Any what?

Q. The use of a control clause when you described them as "delivered prices"?

A. They were all delivered prices.

Q. Did they have a control clause, any of them?

10345 A. Let me see that clause.

By Mr. Leisure:

Q. "On shipments moving on Government bills-of-lading to destination by subtracting from the destination cost to the Government the land-grant rate, or any special

Government freight rate as determined by the U. S. Government as being applicable from our mill to said destination, or the actual commercial rate applicable from our mill to said destination, which rate is the lowest."

A. Yes, that clause is in all of them; that is one that—

10347 Q. I pointed out that in your testimony, either this morning or yesterday, you stated that 95 per cent cement bought by the Procurement Division the last 6 months was at identical delivered prices. I then asked you whether or not some of those purchases—some of those bids—did not carry a control clause similar to the one I read to you?

A. I am not sure that—I get you now, sir—I am not sure on that particular point. I think the probabilities are they did not when the bids are invited for delivery—I mean on the basis of destination. That is what the Government is interested in, what is the cost at the site, as it were, the cost at the point where it is going to be used. The question of freight rates, and so forth, don't come into it then.

Q. But can you say definitely now, Admiral, of your own knowledge, that none of these bids did carry the control clause?

A. You mean—

Q. Of this 95 per cent.

10348 A. No, sir; I can't name it out of the thousands of them; no, sir.

10355 Washington, D. C.,
November 4, 1938.

10357 ADMIRAL CHRISTIAN JOY PEOPLES thereupon resumed the stand and testified further as follows:

Cross Examination by Mr. Leisure (Continued).

10360 Q. I am afraid I didn't make myself quite clear, Admiral. What was the purpose of dividing the United States up into zones?

A. The purpose of dividing the United States up into zones was an effort to obtain competition, f.o.b. mills, throughout the whole country.

Q. Well, did the dividing into zones specifically help that in any way?

A. We hoped it would.

Q. In what way, please?

A. Well, we had to have some basis upon which awards could be—on which the lowest and best bid could be determined.

Q. Precisely.

A. Yes.

Q. Now, is it a fact that in each zone, just as if you had a group of heats in a horse race, you had different manufacturers bidding in one zone, and the lowest bidder in that particular zone was considered, was he not?

A. Yes.

Q. Yes. Now, starting over again, if the lowest bidder in that particular zone had a contract—

A. Yes.

Q. —and you found that you had a bidder from another zone, which, when you figured your destina-
10361 tion cost, was lower than your contract with this first bidder, you would feel obliged under the statute to make the award to the bidder who furnished the cement to you at the lowest possible laid-down cost; is that not clear?

A. If such were the facts.

Q. Is that true?

A. Yes, under the terms, as I just quoted, sir.

Q. Precisely.

Now, it is a fact, then, is it not, Admiral, that in each of these zones you held these preliminaries, as I have designated, you determined who the lowest bidder was in each respective zone; is that not true?

A. Well, our experience has shown us certainly—

Q. Yes.

A. —that a mill 500 miles away could not deliver as cheaply as a man at another point.

Q. Exactly.

A. Yes.

Q. And isn't that the real reason it was divided into zones, then?

A. In order to determine which was the best acceptable bid; yes, sir.

Q. You wanted to find the lowest bidder in each particular zone?

A. Yes.

10362 Q. And having determined that—

A. It was the cheapest source of supply for orders which might have arisen in any particular locality throughout the whole country.

Q. And that was part of your duty under the statute—

A. Exactly, sir.

Q. And then that lowest bidder was given the contract?

A. Yes.

Q. The one that had the lowest bid in that particular zone?

A. Yes, he would have been.

Q. Exactly.

To retrace again: Even though he was given the contract, if you found when you considered the other zones which you have told us you had a duty to do, if you found that a lowest bidder in another zone, having already eliminated all the other manufacturers in his zone, if you found that the lowest bidder furnished you, or offered to furnish you, cement at a lower laid-down cost to the Government, you would feel obligated under the statute to make the award to the lowest bidder in the other zone; is that not correct?

10363 Q. You understood my question, did you not?

A. In that event—

Q. You understood my question, did you not?

A. I am trying to—

Q. Yes.

A. In that event, sir, no award would have been made in the other zone.

Q. To the contractor in the first zone?

A. Yes.

10364 Q. You would feel it was your duty under the statute to make the award?

Mr. Wooden: Well, now, this—

A. To the man in the other zone.

By Mr. Leisure:

Q. To the lowest bidder in the second zone?

A. If such a condition had arisen.

Q. I am merely talking about the possibilities under this situation.

A. Yes.

Q. There isn't any question about that, is there, Admiral?

A. No—no—it would have been foolish to have done otherwise.

Q. It would have been your duty to have done otherwise?

A. Certainly.

Q. I mean, to have done as you have said you would have done—it would have been your duty not to have done it?

A. Yes, not to have made an award, certainly.

Q. To the first contract holder in one zone if you could purchase it cheaper in another zone?

A. Yes, certainly.

Q. And, of course, the underlying reason was that you were interested, always, in getting the cheapest price that you could get?

A. Certainly, sir, f.o.b.—

10365 Q. Wherever the zone might be.

A. We were trying to get competition, Mr. Leisure, f.o.b. mill in various sections throughout the country.

Q. Well, would you have been satisfied with competition if it did not produce the cheapest price available?

A. If what?

Q. You said you were trying to get competition.

A. Yes, sir.

Q. Would you have been satisfied with getting competition if it did not produce the lowest available price?

A. Oh, no, no, no; the rule of reason comes into the situation.

Q. So the real reason was—

A. Yes.

Q. —you wanted to get the lowest available price?

A. Yes, sir.

Q. At all times?

A. We thought the only way we could get it was through competition, and expected it; yes, sir.

Q. Yes, but it was the lowest available price you were after?

A. We— the Government was entitled, we thought—was entitled to secure the lowest reasonable prices f.o.b. mill in carload lots in various zones throughout the country.

Q. Precisely.

10366 And, on that point, Admiral, can you give me any instance, in your 30 years' experience purchasing for

the Government, when the Government ever paid a penny more for its cement than the prevailing market price at the time and place for the purchase?

A. Any more than the prevailing market price?

Q. Can you give me one single instance in which the Government paid any more?

A. I don't know of any.

Q. For its cement?

A. No, sir—that is above, in every case where the Government was compelled to pay a price above the prevailing market price, I don't know of any.

Q. You know of no such instance?

A. No, sir; I do not.

Q. Now, coming back to these respective zones in which we had a bidder in one zone with a contract, and then on consideration you found another zone in which the bidders' laid-down cost was cheaper, and so you were compelled to make the award to the second bidder—you understand me?

A. I think I do; yes, sir.

Q. Well, that is just what we covered a moment ago.

A. Yes, sir.

Let me make myself clear here, on that particular point. Here you have a zone located here (witness traces
10367 on the table with his finger)—you have, if I get your point, another zone located here (indicating). Now, if this bidder here (indicating)—

10368 Q. You see, you are designating with your finger and it doesn't show on the record. Would you mind taking two states, say, California and Oregon, or any state you like, and call them the zone, to explain?

A. Take a state like Ohio.

Q. Yes.

A. If the prices for delivery in Ohio on any zone would have been higher than the prices on a zone covered by Indiana and the Indiana man could have covered the Ohio zone cheaper, plus his freight, than the Ohio bidders, and in Illinois the same condition would have existed, the Ohio bid would not have been lowest.

Do I illustrate it, sir?

Q. (Mr. Leisure nods affirmatively).

A. If, on the other hand, the Ohio bid may have been higher or better than the Illinois bidder, of course the Ohio man would have been entitled to an award for the deliveries in the Illinois zone and the Indiana man in the Ohio zone.

Does that answer it, Mr. Leisure?

Q. Now, Admiral, it didn't take place exactly that way?

A. No.

Q. I am going back to the beginning as you set it up, here.

You were to hold these preliminaries. It was not
10369 a matter of bidders in Ohio where you had already eliminated the bidders and selected the lowest bidder?

A. I pointed that out in the illustration, yes.

Q. And as you explained a moment ago, having held these preliminaries, you would have selected the lowest bidder in Ohio who would hold the contract?

A. The answer to that is that the award would have been made to the mill plus cost of freight to any zone; the Government trying to get the lowest cost in each particular zone. Whether it came from the zone itself or adjoining zone or zones, that applies.

Q. That is correct. But that is just a little ahead of my question, Admiral.

The question is that the man in Ohio would have been a successful bidder in the illustration that you give after you had held the preliminaries.

A. They were all preliminaries—

Q. In other words, you were interested in holding these preliminaries in each zone in order to determine the lowest bidder in each zone, isn't that true?

A. Yes, we were—through all the zones the same way; yes, sir.

Q. And he would have had a contract in Illinois, in the illustration which you have given.

Now the point I am coming to is that although the
10370 man in Illinois had a contract you might determine to give the award to the lowest bidder in the Illinois zone if you found that it produced the lowest laid down cost to the Government, isn't that so?

A. Please don't confuse the award and the contract. They are synomous terms with us, Mr. Leisure.

Q. Perhaps it is a misunderstanding of words.

Instead of using "award" I will say "placing an order for cement," if you like.

A. Placing an order for cement is—the delivery of it follows the contract.

Q. Precisely. But it is true, is it not, that having de-

termined the lowest bidder in Ohio in the illustration which you gave, having determined that and given them a contract, if you found that the lowest bidder in Illinois could give you a lower laid down price under the provisions of this proposal, you would place the order with the Illinois bidder?

A. Exactly so and also providing the Indiana man was under-bidding the Ohio man for the Ohio delivery.

Q. Precisely.

A. Yes, sir.

Q. Now we understand each other on that.

A. Yes, sir; I hope so. I am trying to understand you, I assure you.

10371 Q. And the adjoining zones had to be considered?

A. Certainly.

Q. Even though the successful man in one zone might have the contract?

A. Certainly.

Q. Now, your purpose in having these preliminaries, as I have described it, in the State of Ohio in determining the lowest bidder there, was to be able to get a contract with the lowest bidder?

A. Yes, sir.

Q. And having such a contract you would be able to compel the lowest bidder in Ohio, in your illustration, to perform, would you not, Admiral?

A. According to whatever the conditions of the award that had been made to him.

Q. Yes.

A. Yes, sir.

Q. He would have to perform under the terms of his contract?

A. Or which was based upon his bid.

Q. Yes.

A. Yes, sir; exactly.

Q. So that in the instance you have given us, Admiral, the lowest bidder in Ohio could be compelled to perform by the Government, but, on the other hand, the Gov-

10372 ernment was not obliged to purchase from him; they could purchase from Illinois; isn't that correct?

A. Not if the costs plus freight rates were in his favor.

Q. No, I agree with that, but if they were, you could purchase, as you have already told us, you could purchase into Illinois; isn't that so?

A. Yes, sir. Of course, if his bid, though, did not cover—it has been our experience right along that the two mills at different points, one mill has the advantage, naturally, within the area of his zone for deliveries within that zone, adjacent to his mill or close to it, as compared with a mill at distant points, because the question up to a certain dividing line as between the two of them is where the question of freight rates equalize each other. The f.o.b. price plus freight to the point of using is a factor to be considered in each case, whereas, on the other hand, the f.o.b. price plus the freight to the same site; yes, sir.

Q. If you don't mind, Admiral, I am going to bring you back to our problem for just a moment before we leave it.

The bidder, to use your example, the lowest bidder in the State of Ohio could be compelled by the Government under its contract to perform, if they called upon him to perform, could it not?

A. No, you couldn't cover more than was covered in the first place.

Q. Yes, that is what I say.

10373 A. You couldn't compel him to do more than what his bid proposed, sir.

Q. I am not suggesting that.

A. That is what I have been driving at right along. The award was made to him on the basis of his bid, whatever it may have been. The Government couldn't compel thim to do something else.

Q. He could be compelled, however, Admiral, to perform under the terms and conditions of his contract?

A. Exactly, and the contract was based upon what the bidder proposed, sir. For instance, if a bidder bid only on zone 6 you couldn't compel him to make deliveries in zone 8.

Q. No, I wouldn't suggest that.

A. Unless he bid accordingly.

Q. I think you are right about that, Admiral, but he could be compelled to perform under the terms of his own contract?

A. Yes, indeed; yes, sir.

Q. Now: But he could not compel the Government to perform because, as you have already told us, if you found that the lowest bidder in the State of Illinois furnished a

lower laid-down cost you would feel obliged, as you have already told us—

A. If it were covered by the contract for the other bidder for the other zone on zones; yes, sir; as the case may be.

Q. You would feel it was your duty to consider
10374 the other zones, as you have told us several times?

A. Certainly.

Q. And you would feel it was your duty to place the order in the zone that would furnish to you the lowest laid-down cost; isn't that correct?

A. Exactly so, providing it was in accordance with the terms of the contract, sir, which, in itself, was based upon the offer of the bidder. If the bidder had not proposed delivery, say, in the Ohio case you mentioned, if the bidder hadn't bid on Indiana, or vice versa, or in Illinois, the Illinois man, you couldn't compel him to accept deliveries in other States.

Q. I think you are entirely right about that, Admiral.

A. Yes.

10380 Q. Now, Admiral, I think you have told us yesterday that some of the manufacturers to whom you sent this proposal ignored the bid?

A. Yes, sir.

Q. Yes?

A. There was a list of them.

Q. Yes.

And you also told us, as I recollect, that others
10381 refused to bid and sent you letters explaining why they could not bid?

A. Yes, sir. They were listed.

Q. Yes. And were not some of the very objections which you and I have been discussing this morning raised in those very letters?

10382 A. The letters in general raised the objection that the quantities were indefinite; that they wanted delivery—quotations—on the basis of destination points. It was particularly the indefinite quantity, as I recall, contained in those letters. Unless I could read them to you—

10388 (RESP. EX. 36 was offered and received in evidence.)

(RESP. EX. 37 was offered and received in evidence.)

(RESP. EX. 38A and 38-B was offered and received in evidence.)

(RESP. EX. 39-A and 39-B was offered and re-
10390 ceived in evidence.)

(RESP. EX. 40 was offered and received in evidence.)

(RESP. EX. 41 was offered and received in evidence.)

(RESP. EX. 43-A, 43-B, and 43-C was offered
10391 and received in evidence.)

(RESP. EX. 42-A, 42-B, and 42-C was offered and received in evidence.)

(RESP. EX. 44-A, 44-B, and 44C was offered and received in evidence.)

10392 By Mr. Leisure:

Q. Admiral, coming to this Good Friday bid or the March 30 bid, that is, the Commission's Exhibit 1339, the proposal, was that proposal designed to require all the cement the Government would need for a certain period?

A. Was it designed?

Q. Yes.

10393 A. Yes, sir, it was.

Q. What was that period of time?

A. For the period May 1, 1938, to August 31, 1938.

Q. That would be four months?

A. Yes, sir.

Q. And were they designed to make all purchases direct from the manufacturers?

A. During that period of time?

Q. Yes.

A. From those who held contracts.

Q. And they were all manufacturers?

A. Except certain existing contracts.

Q. Yes.

A. Yes.

Q. And as far as the proposal was concerned, it was designed to cover a period, as I understand it, as you have told us, for four months?

A. Yes, sir.

Q. And the purchases were to be directed from the manufacturers?

A. Yes, sir.

Q. That is, no dealers were involved?

A. Well, to anyone who submitted bids, yes.

Q. Did you submit any proposals to any dealers?

A. They were available. I don't know whether
10394 —they probably had them.

Q. Did you send them out to the dealers?

A. No.

Q. As you did to the manufacturers?

A. No, because they were sent to the manufacturers or the mill people.

Q. Yes.

A. Exactly.

Q. As a matter of fact, it was your intention to purchase direct, wasn't it, Admiral?

A. In an effort—exactly.

Q. From the manufacturers?

A. To purchase direct, sir.

Q. That was the purpose of this proposal?

A. On the theory that dealers were not in a position to quote on f.o.b. mill basis.

Q. And why did you want to purchase direct from the manufacturers?

A. Merely because the manufacturers controlled the mills.

Q. Yes.

A. If any dealer controlled any mill, he could bid on it.

Q. And was it because you wanted to deal directly with the manufacturers and so you could get it cheaper?

A. We wanted to deal with the man—we were invited —we were inviting bids on the basis of f.o.b. mill.

10395 Q. Yes.

A. Exactly.

Q. And you were dealing with the manufacturers?

A. If they happened to—it would be open to a manufacturer who could submit a bid on that basis, naturally, and only bids from manufacturers could have been considered. If any dealer could have bid on an f.o.b. mill basis, the bid from the dealer would have been considered, naturally.

Q. Now, I am not talking about what might have been; I am asking you what actually happened.

A. No dealer was barred from bidding, if he could bid.

Q. I don't suppose Canada or England was barred, either, but I am asking you what happened, sir.

Did you send these proposals to the dealers, or did you send them to the manufacturers?

A. We sent them to the manufacturers.

Q. Yes. And it was your purpose, was it not, to buy the cement direct?

A. From anyone who could submit the bid on the basis of f.o.b. mill, to buy direct, yes sir.

Q. To buy it direct?

A. Yes.

Q. Now, at least, one of the purposes to be served by buying it direct—

A. There was no intention to bar dealers as such
10396 on a contract.

Q. One of the purposes of purchasing direct—

A. To hold—all these proposals were public property, disseminated everywhere; anybody could have gotten them at any time. Any dealer could have gotten them at any time. I don't—there was no discrimination there whatever, sir.

Q. Well, now, which is correct, Admiral? I have you both ways on the record. One, that you wanted this cement—it was your intention under this proposal to purchase direct, and, now, as I understand you, it was your intention to purchase from dealers or anybody else. Now, which is correct?

A. Purchase it direct from the man who could quote f.o.b. mill.

Q. And could anybody else, in your opinion, in all of your business experience quote f.o.b. mill other than the manufacturers?

A. We didn't think so.

Q. No. So then it was not, Admiral, your purpose to make these purchases direct, direct from the mill, so far as this proposal is concerned?

A. Anybody else could have bid, if he wanted to.

Q. I am sorry. That is not my question. It was your purpose, Admiral, to purchase direct from the manufacturers in this instance?

A. It was our purpose to purchase from—on the
10397 basis of f.o.b. mill. That was our purpose.

Q. Yes.

A. And in trying to accomplish that purpose, we forwarded the proposals to the people whom we thought were in positions to bid accordingly, sir.

10407 Q. Did the Secretary state that the bids must be re-taken on more business-like terms?

A. I don't recall that.

Q. You don't recall—

A. The secretary was disappointed in the result of the bidding. We were all disappointed in the result of the bidding, and we all believed, including the secretary, that as this was negative, the results under this schedule were negative, then the only thing to do was to try, on the basis, as we did subsequently, in asking for definite quantities, but the cement people always objected to bidding unless the place of delivery was revealed, and that we refused to do.

The Secretary was always of the opinion that he believed that the Government was entitled to fair competition on the basis of f.o.b. mills; yes, sir.

10411 Q. Now, Admiral, will you look at this document which has been marked purely for identification as Respondents' Exhibit 45.

Was that one of the bids received in response to the invitation received in evidence as Commission's Exhibit 1339?

A. Yes, sir.

Q. That was the one that was received from Marquette Cement Manufacturing Company?

A. Yes, sir; of Chicago, Ill.

Q. And you say that they qualified their quotation so as to make the bid inacceptable?

A. Yes, sir.

Q. Now, will you please turn to the qualifications, if you need to, in order to refresh your memory, in any way?

A. I certainly do.

Q. And tell us what the qualifications were that made it inacceptable. Let's just take your time.

A. (Witness refers to papers.) As a part of their bid, sir, the Marquette Cement Manufacturing Company stated,

"Qualifications and additions to"—

10416 A. I think their qualifications—their qualification under paragraph 1 is for the purpose of making their bid, and their letter of April 12, 1938, to be a part thereof—now, I will have to get at that letter of April 12.

By Mr. Zimmerman:

Q. I think so. Just take your time.

A. I can read the letter of April 12.

Trial Examiner Norwood: I want you to do it in your

own way. Say what the condition in the letter was that disqualified the bid.

A. Well, then, sir, I think I had better read it
10417 because they specifically mention there that this letter of April 12 forms a part of what their bid is based on. They say there in their letter of April 12, 1938, because it is referred specifically to the paragraph 1 of their qualifications to the bid, of which the letter of April 12, 1938, is a part.

10418 Trial Examiner Norwood: Go ahead.

A. Their letter of April 12, 1938, which forms a part of their bid, states: "It is the best bid we can make under the limitations and restrictions imposed by your invitation. The major difficulties confronting us under this proposal are, first, that it discloses nothing about the quantities of the various kinds of cement to be purchased, nor the points of use thereof. Second, you do not undertake to make actual purchase"—

By Mr. Zimmerman:

Q. May I interrupt just a moment, Admiral?

A. Yes, sir.

Q. That is correct, is it not, that statement? You did not disclose any quantities, did you?

A. Except that the Government agreed to take all of the cement required—

Q. Yes.

A. —in their zones.

Q. But no quantities of any particular kind that they would require was named?

10419 A. There were no exact quantities stated.

Q. That is right.

A. Except we agreed to take all that would be required.

Q. Yes, I know that.

A. In their zone.

Q. I know that. We went over that yesterday. But there were no exact quantities at all mentioned?

A. Yes, that is true.

Q. All right. Go ahead.

A. "Second, you do not undertake to make actual purchase and to take actual delivery of even one barrel of the total you might award to a successful bidder."

Q. That is correct, is it not?

A. No.

Q. Well, now, let us stop a moment and see. Suppose you had made an award—

A. Now, wait a moment.

Q. Yes, sir.

A. Part of this bid, that they do not undertake to make actual purchase—then they go ahead and bid on a basis of—(witness refers to paper)—of certain quantities—

Q. Yes.

A. —that they guaranteed to deliver in certain zones at certain prices.

Q. That is right.

10420 A. Now, if the contract had been awarded to them—had been accepted—

Q. I am sorry, I did not hear.

A. I mean, if their bid had been accepted—

Q. Yes, sir.

A. —for those zones, they would have received the Government orders for all the cement that was called for in their zone—

Q. And if their bid had been accepted the Government would have contracted to take a definite minimum amount from them, too; isn't that so?

A. That's true, because they specified—that was another objection we had to the bid.

Q. I see. Well, now—

A. Because it—as we took it, it required a minimum quantity to be taken.

Q. Yes. What was it, 75,000 barrels, was it not?

A. Wait a moment.

Q. Spread over the different—

A. You let me go ahead, sir, without interruption I think we might get—

Trial Examiner Norwood: Let him go ahead.

Mr. Zimmerman: I won't interrupt you any further—

The Witness: Yes.

Mr. Zimmerman: —any more than I have to.

10421 By Mr. Zimmerman:

Q. If you will tell us when you read, tell us whether or not the statements you read are correct, or are not correct, then it will not be necessary for me to interrupt you.

A. Well, I stated, sir, on that second statement, that is not actually true.

Q. All right.

A. They may have assumed it to be, but it would have turned out that way.

Q. All right.

A. "Third, it appears to call for sales to you on classes of work in connection with which we have for years recognized the building material dealer as a necessary and indispensable intermediate distributing medium. In years past the sale of 60 percent or more of our entire production has depended upon and been made through a dealer organization patiently built up at the expense"—

Mr. Wooden: Just a moment. Just a moment.

Again I repeat the objection, Your Honor, to getting into the record a mass of self-serving declarations without any opportunity for cross-examination of the person who made them.

Mr. MacIntyre: Who is here, and who will the Respondents submit for cross-examination that will vouch for a statement that the Marquette Cement Manufactur-
10422 ing Company had, in past years and down to the time of this proposal, distributed 60 per cent of their cement through dealers—

Mr. Wooden: And how can the Admiral, this witness, say whether or not that is true.

Trial Examiner Norwood: This is only received as an explanation of why this company failed to bid, or as to why the bid that it did send was unacceptable to the Government.

Mr. MacIntyre: If Your Honor please, what Counsel is asking the Admiral is whether or not certain statements made by the Marquette Cement Manufacturing Company were or were not true.

How can the Admiral know whether or not the Marquette Manufacturing Company was making a truthful statement?

Mr. Zimmerman: Your Honor, this is an interruption that I was hoping could be avoided. The witness, the Admiral, said he did not want to be interrupted, he wanted to go ahead in his own way, and that is what he is doing.

Trial Examiner Norwood: I think the witness can answer this. We all want to know the answer.

Mr. MacIntyre: We want to know whether it is true or not.

Mr. Wooden: The witness has been asked to state
10423 whether or not it is true.

Mr. Zimmerman: I think that the last statement of the witness was that he—the Admiral said he could go ahead in his own way better if not interrupted. I told him to go ahead and I would not interrupt him?

Trial Examiner Norwood: Go ahead with your answer, Admiral.

A. "In years past the sale of 60 percent or more of our entire production has depended upon and been made through a dealer organization patiently built up at the expense of a very large sum of money and with considerable effort. We therefore ask you to consider that this dealer organization represents a very valuable part of our good will and that in connection with maintaining this good will and this important sales outlet it has for many years been our definite general policy to stay out of the retail business and to confine our business to that of a wholesaler dealing in minimum quantities of carload lots. We say this is our general policy, despite the fact that we do meet the competition of other companies in a few places where such companies sell in less than carload lots and deliver by truck. Now, as stated, it"—

I don't know whether that is true or not, gentlemen.

"Now, as stated, it appears that much of the cement contemplated to be purchased under this proposal
10424 in zones on which we are bidding is intended to be used in such small quantities and at such points remote from railroad sidings as have been handled in the past through building material dealers."

I think that is probably true.

"Thus, in making this bid, we are confronted with the very serious problem of departing from our long established policy of selling through dealers wherever the situation requires service which the dealers are particularly equipped to furnish."

I don't know whether that is true.

"Frankly, we are extremely loath to do anything which may result in antagonizing members of our dealer organization, which constitute the backbone and mainstay of our market for cement, and, therefore, we have been compelled to decide that we must qualify this proposal so as to work as little hardship as possible under the building material

dealer and yet so that we come as close as possible to meeting the requirements of your invitation."

That is a declaration, I don't know whether it is true or not.

"With respect to quantities and points of use, we wish to point out that we could have made a much more intelligent bid if we had been furnished with information along these lines."

Well, I don't know whether that is true or not.

10425 "Consistently, for many years past, it has been the policy of Marquette Cement Manufacturing Company to bid f. o. b. mill basis to the United States Government where land grant rates or barge shipments were involved with the possibility of a resultant material saving to the Government by such bidding and by taking delivery at the point of shipment and shipping on Government bills of lading.

"As examples and as illustration of what has been and what could be accomplished if such information were furnished, we cite to you the attached list of f. o. b. mill quotations made by this company to the United States Government.

"Now, however, it appears that instead of adopting this policy—"

That is probably true. I have no reason to question that statement.

Q. The list of f. o. b. mill bids you don't doubt, at all?

A. That list in here. We have no reason to question that.

"Now, however, it appears that instead of adopting this policy the Procurement Division has seen fit by the provisions and conditions submitted in the invitation beginning at the bottom of page 6 to adopt what may be fairly described as a destination cost control clause.

"Certainly it is true that the cost of Portland Cement at the point of use, that is, the destination, has been

10426 and will continue to be the controlling feature in making awards either upon the Government or any other purchase contract."

That is true.

Thus, the market place at which competition is required is at the point of use or destination.

10430 (RESP. EX. 45 was offered and received in evidence.)

Mr. Zimmerman: The Admiral is going right ahead from where he was, I take it.

By Mr. Zimmerman:

Q. You were in the sixth line.

A. "—at the point of use or destination. By the system of bidding in the dark evolved and set forth in your invitation to bid, where no information is given as
10431 to the point of use or destination, it is not possible to procure constructive and money-saving competition. Lack of information as to any definite quantity to be purchased only accentuates this condition.

"In connection with your apparent position of not committing yourself to taking actual delivery of a definite amount of cement under a contract to be entered into following acceptance of this proposal we ask you to appreciate the fact that without modification of this position there would be introduced into our operating picture an element of uncertainty and speculation which we have never had to deal with before and which would appear to jeopardize and possibly seriously upset our production schedules, which are inseparably connected with cost estimates, and also our labor schedules, upon which the welfare of approximately 1200 employees, their families and the small communities in which they reside, largely depend. Let us try to illustrate: The four months of your proposed contract period are the very months during which more than half of our total production for the calendar year is shipped. We start with our storage bins completely full, and in order to run steadily through the ensuing fall and winter and not again fill our bins until the spring of the following year, we must adjust our operating schedule during the year so that we have empty storage bins at the end of the shipping season on November first. In
10432 other words; Portland cement must be produced and stored up long in advance of use. This, coupled with the fact that about seventy-five per cent of our sales are made, too, long in advance of use, and that they are for specific work which we know definitely will result in shipments, makes our operations extremely sensitive to any speculation or uncertainty. If, under these circumstances, we accept an obligation to ship a specific amount of cement, we must set aside that much of our stock of finished cement. If it then does not move, we will have it left over

at the end of the shipping season and a shut-down of our mills will then become necessary during the following winter, because we cannot make more cement than our bins will hold. Because of these things we must restrict the tonnage upon which we can speculate, and this explains the essential requirement of the minimum which the Procurement Division will be required to take if any part of our bid is accepted and the rather low limitations upon the maximum quantity both of which we have placed in our proposal.

"Because of the necessity of making our commitments as definite and certain as is reasonably possible, it has been necessary to qualify the provisions that will be included in the proposal and contract which are hereto attached, and, together with this letter, made a part of our bid. It will be noted that we have stricken out the
10433 provision on page 6 of the 'Conditions' under which we would be required, in addition to any purchase by the Government, to furnish cement to any and all people and agencies using cement on, or supplying cement to, projects, the construction of which is provided for in any manner or in any part by Federal Government financing. Such additional indefinite and speculative obligation cannot be undertaken for the various reasons already stated."

Then follows—

Mr. Wooden: Do you mind stating who signed the letter, Admiral?

The Witness: Yes, sir. That letter was signed by the Marquette Cement Manufacturing Company by Mr. W. A. Wecker, President.

10434 Mr. Zimmerman: I will stipulate he did, if he wants me to do it.

Trial Examiner Norwood: Go ahead.

A. Now they go ahead in a long series—part of their qualifications.

By Mr. Zimmerman:

Q. Next they do give you a list of f. o. b. mills to the Government?

A. Yes. That is what I mentioned, sir.

Q. And then following that they do give the qualifications and additions, don't they?

A. Yes.

Q. The first qualification being—any that you find that

you think are objectionable I wish you would point out. You needn't point out any except those which you think were objectionable.

A. These qualifications are so very highly technically drawn, I don't quite understand them.

Q. Let us take the first one you don't understand.

A. This No. 2: "We cannot assume responsibility for any declaration of default, loss or damage or loss by
10435 reason of delay on delivery consequent upon any strikes, acts of God or other fortuitous contingencies beyond our control."

That exception is allowed for in the bids and—

Q. Well, point it out.

A. In the proposal. Do you have that standard form of proposal?

Q. You will find it in 1339, if it is there.

A. No.

Q. It isn't there, is it?

A. No, but this—

Q. But it is ordinarily in all contracts, isn't it?

A. It is standard form but—

Q. Yes, but it is so it should have been in this specification, isn't it?

A. Yes, it is; it is in our standard form.

Q. All right, thank you. Go ahead.

You may, if you wish, Admiral, when you are ready, go ahead to the next.

A. That is the general clause. However, it is a small point, as far as that is concerned.

Q. Yes, that isn't very important.

A. What? No.

Q. That isn't very important?

A. I say, it doesn't—

Q. Well, Now, take the next one that isn't clear to you.

10436 Take No. 3, for example. That is quite clear and it was fair, wasn't it?

A. "Reference is made to the requirement that the bidder 'execute, if required, the Standard Government Form of Contract' (Standard Form No. 32). It is understood that this reference applies to 'U. S. Standard Form No. 32 (Revised)."

Yes, that is all right.

Q. That was understandable and satisfactory?

A. Certainly. I can't imagine—

Q. All right. Go ahead. We are just making it a little bit more clear as to what the standard form was that you had reference to.

A. "Reference is made to 'Discounts' " and so forth. Numbers 4 and 5 are O.K.

Well, now, on 6, they eliminate all reference to the quantity to be purchased under the contract.

"Note that we have entirely eliminated this provision from our bid"—

Q. The second paragraph of that was entirely eliminated. The second paragraph.

A. "Reference is made to page 6 of the 'Conditions'." And that reads: "In addition to purchases by Government agencies for their own use under the proposed contracts, successful bidders shall furnish cement to any and all people and agencies using cement on, or supplying cement to, projects, the construction of which is pro-
10437 vided for by contract or otherwise, subsequent to date of this contract and which are financed in whole or in part by the Federal Government, at prices not to exceed those stated in the bid."

Q. If you will turn to page 6, you will see that that is stricken out in red ink.

A. I get this point now.

Q. Now, that provision was left out of every subsequent invitation wasn't it?

A. It was, yes; it was.

Q. It would have—

A. But that was not—in so far as that was particularly concerned, that was not a major objection.

Q. I see. All right, sir. Then I don't want to waste time on it.

A. It was minor.

Q. You thought that our objection in that regard was one that you could have gotten along with?

A. Yes. Yes.

Q. All right. Now, the next one is our reference to the inability to make moderate-heat-of-hardening cement as fast as you wanted it?

A. That is all right.

Q. You see, we wanted a little more time on deliveries on that moderate-heat-of-hardening cement.

Did that seem fair to you?

10438 A. That seemed o.k.

Q. Because of it being a special cement, we just couldn't be sure that we could deliver it within 15 days.

A. That was o.k.

Q. All right. Now go ahead with No. 8.

A. Number 8 would have been o.k.

Q. Now, that is paragraph 8 on page 3 of the qualifications and additions that we have reference to?

A. Yes. Nothing special there.

Q. That only referred to a little longer time for bins for test?

A. Yes.

Q. And for special cement?

A. Yes.

Q. Yes?

A. No. 9, there was not any major objection to it.

Q. You wouldn't have had any objection?

A. No.

Q. And you wouldn't have thrown out our bids just on that account?

A. No.

10439 Q. You see, the point is this, Admiral, that we don't have any control over—

A. I get the point.

Q. You have made a little change in your subsequent conditions in that regard, haven't you? I think you had eased up on that just a little?

A. I think so.

Q. Yes. Go ahead.

A. I think No. 10 would have been o.k., except the one part there that may or may not have been. I would have to reserve it.

Q. Well, let me call your attention, Admiral, to the fact that under the language that was used in this specification or in this invitation, Commission's Exhibit 1339, the language referred to f.o.b. mill?

A. Yes.

Q. And under that it was not clear that anybody could submit a bid from a point where they might have a silo or storage plant, or what they call a packing plant.

Now, did you not change that and clarify it in your subsequent invitations?

A. Yes.

Q. So that it was clear that anybody might bid from those points?

A. Yes, yes, sir, we did.

10440 Q. And all we were doing in No. 10 here was to say that while you had used the word "mill" we were going to interpret the term "mill" to mean the manufacturers' place of manufacture, storage, silo, or warehouse, from which shipments will be made as requested, and that our bid is based according to this interpretation.

That was rather helpful, wasn't it?

A. I think it would have been all right, sir.

No. 11 would have been o.k.

Q. No. 11 you thought was all right?

A. Yes.

Q. That is where you had inadvertently used 100 barrels for a carload when, as a matter of fact, it should have been 132.

10441 A. I think twelve would have—in the location of this mill—would have been all right.

By Mr. Zimmerman:

Q. That is twelve on page 5 of the qualifications, the paragraph under No. 12?

A. Yes.

Q. All right. Well, now, if you had been able to get enough such bids as Marquette's, so that you would have had what you might call an adequate supply to cover the country, your needs, would you not personally have favored accepting the bids and awarding the contract?

A. I think that would have answered our problems very largely.

Q. Yes. One of the great difficulties was that you just did not get enough—

A. Yes.

Q. —of bids?

A. Of course one feature—

Q. —of bids to cover your needs for the country?

A. Of course one feature, though, Mr. Zimmerman, about it—

Q. Yes?

A. —and that was the minimum quantity specified.

Q. Yes?

A. I feel absolutely confident, in the working out—the practical working out of the contract—

10442 Q. Yes?

A. That never would have entered into it.

Q. Well, now, let us talk about that for just a moment.
A. (Resumed) But we couldn't—
Q. Go ahead.
A. —we couldn't, under the circumstances, have bound the Government on that score.
Q. Well, now, you do, do you not, in your later invitations—
A. Oh, yes.
Q. —specifically provide for a minimum?
A. On our later invitations specified for—for exact quantities.
Q. And minimums?
A. But hooked up with your first question, if there had been no minimum specified, if all bids had been as responsive as that of the Marquette Company, I think the problem would have been solved.
10443 Q. Commission's Exhibit 1381, Admiral, is a form of invitation which is typical of the forms of invitation used in soliciting bids subsequent to April 15, 1938?
A. It is with one exception of the exhibit which is already in the record, that is the Shoshone project.
Q. I think there might be only one.
A. There is only one.
10444 Q. All right.
A. Yes.
Q. But with that one exception, it is typical?
A. Yes.
Q. Now, let us refer in that exhibit to the provision with reference to the amounts that the producer is bound to ship.
A. You mean on page 4?
Q. Well, I have not found it yet, sir; I am trying to.
Mr. Paulson: Page 19, is it not?

By Mr. Zimmerman:

Q. I am trying to find a provision in this section specification, or invitation similar to the one "Maximum Quantity," if you read from page 7 of Commission's Exhibit 1339.
A. Wait a moment, now—page 7?
Q. Yes.
A. No, sir; it is not there.
Q. Oh, it is not?

A. It is not in this, for the simple reason that Exhibit 1381 called for delivery of a specified quantity, 250,000—

Q. So in that case—

A. —barrels at the basing f.o.b. mill.

Q. Yes.

A. Point of destination—

Q. So that whenever a bid was received in response to such an invitation as this Commission's Exhibit 1381—

10445 A. Yes.

Q. —it would be on a specific quantity?

A. Exactly.

Q. Where both parties would know exactly what they were obligated to buy and deliver?

A. Exactly—that is perfectly true.

10455 Q. When you testified, as I think you did, in the last six months about 95 percent of all the orders that were placed or contracts that were let were on a destination cost or, let us say, delivered price—

A. Yes, sir.

Q. —do you distinguish at all between the destination cost bids and delivered price bids?

A. No.

Q. All the same thing to you, is it?

A. All the same thing; yes, sir. That is, the main prices for delivery at the site.

Q. Well, as a matter of fact, the thing you let a contract upon is always the destination cost, is it not? I mean, the cost at the destination, so far as your department is concerned?

A. That is the controlling reason; yes, sir.

10456 Q. Now, how is—

A. Or sometimes the question of kind of shipment,—maybe shipment by water, shipment by rail.

Q. But always you have to figure what the destination cost is?

A. Oh, yes; exactly so.

Q. I can see that where the destination cost on an f.o.b. mill plus a land-grant rate might be the same as a delivered price bid there might be an advantage by excepting the "delivered price bid" and saving yourself red tape and Government bill of lading.

A. Yes, sir.

Q. That is sometimes done?

A. Oh, yes.

Q. That is in the case where there is no saving by using f.o.b. mill plus land-grant rate?

A. That is true.

Q. Now, the importance of the f.o.b. mill base, therefore, so far as the Government is concerned, is to secure to it the saving through land-grant rates; is that not so?

A. No.

Q. You would say that was not so?

A. Not always. That is partially so; not always so.

10458 Q. Admiral, when there is no apparent saving by the use of a land-grant rate, that is to say, for example, where the f.o.b. mill price plus a land-grant rate to the destination is just the same as a destination price where commercial freight is used, you would rather accept the destination price and save yourself the expense and trouble of shipping on a Government bill-of-lading; would you not?

A. That is true; yes, sir.

Q. I think that is about where we were when we got a little mixed up here on this record.

Now, what I asked you next, as I recall, was this: That the f.o.b. mill price is of advantage to the Government in the way of saving it money wherever there is a land-grant rate involved which is lower than the commercial or any special rate.

A. That is true.

10459 Q. Now, to what extent, if at all, is an f.o.b. mill price of any advantage to the Government other than that—I mean, in the way of saving money on any particular purchase?

A. Well, it is of considerable advantage where the actual destinations are not known f.o.b. mill.

Q. How does that save any money? You have to pay the commercial rate, don't you?

A. You will after, yes, after, if an order is placed after the contract is entered into.

Q. Yes.

Q. The freight that you have to pay, being a commercial freight, is exactly the same freight that every other person or firm would have to pay; isn't that so? You get no advantage to the Government where there is only a commercial rate involved?

10460 A. Yes, that is true, except the advantage—well, of course—

Q. Now, since the thing that you want to find out in letting any contract is the lowest amount of money, or, let us say, the lowest net available charge against the public moneys, it would be a little difficult to know who was the lowest bidder unless you knew what the destination involved was; wouldn't it?

A. Sometimes; sometimes no.

Q. Well, considering it from the standpoint of cost at destination, and where you don't know and nobody knows what the destination is, how can you tell what bid at what mill was going to give you the lowest cost at that destination?

A. Well, in so far as the invitation for bids under that opening of April 15th were concerned, and if the whole country had been covered, in the preparation of zones, we tried to secure or locate in each zone at least two competing zones in the hope that we would be able to get competition between them.

Q. Yes. And then you put in what you might refer to as a control clause which reads like this, at the bottom of page 6:

"The effective delivery area to be obtained by the lowest bidders within zones and/or sub-zones will depend entirely on the relationship of low bids of adjoining zones and/or sub-zones. Government agencies will take delivery from those mills whose f.o.b. contract price plus cost of
10461 transportation to destination is lower."

A. Yes, sir.

Q. Now, that you put in there to control the situation so that having made a letting and an award, or, in other words, a kind of a blanket contract, by which the producers agreed to sell you what you later on asked them to sell you, if anything. Then under this control clause, when you needed cement at a given destination, you could determine what f.o.b. mill price had been quoted to you, and then you have got the price at the several mills?

A. Yes.

Q. And then you would take and add the freight from that mill to the destination in each instance to the f.o.b. mill price that you had in each instance. By adding those together you would get a destination cost in each instance?

A. Yes, sir.

Q. Wouldn't you?

A. Yes, sir.

Q. And you could look at those and very clearly see which one was the lowest?

A. Exactly.

Q. And based upon that you would then make an order from that mill which had the lowest delivered price?

A. Exactly.

Q. And that was the purpose of this clause at the
10462 bottom of page 6?

A. Yes, sir.

10470 By Mr. Zimmerman:

Q. What has the system of identical bidding which you have referred to to do with the question of whether the Government is able to buy cement at a given destination at less than the price paid by other users of cement at the same destination?

A. The system of identical bidding does not indicate this competition—

10471 Q. That is not exactly what I asked you. I am glad to know that. Buy what I want to get at is this, now: What has identical bidding got to do with whether or not you buy at a given destination for the Government at a lower price than other users of cement, who are not connected with the Government, are paying at that same location? Is there any relation at all?

A. I don't know as it has anything to do with it.

By Mr. Zimmerman:

Q. I didn't think so.

A. No.

10473 Q. Well, you can say, can't you, Admiral, that if each time someone bid less than anybody else and the next time somebody would bid lower, after a while it would get down to a point where nobody was making profit, or even losing money, isn't that so?

A. Theoretically you arrive at the point vanishing returns, yes.

10502 *Redirect Examination*

By Mr. Wooden:

Q. Admiral, Mr. Zimmerman gave you a hypothetical case of a bidder's offering to meet the lowest—or to meet the freight advantage of the nearest mill, and under this system of identical bidding that you have described, how

do you know whether the distant mills have lowered their prices to meet the freight advantage of the nearer mills, or whether the nearer ones have raised their prices to meet the disadvantage of the more distant ones?

A. I couldn't tell, sir.

Q. Now, under this illustration that Mr. Hershberger was asking about, in the case of Buffington shipping
10503 into Chicago, and LaSalle also shipping into Chicago, both mills quoting $1.50 at the mills; suppose we assume that the LaSalle mill in order to get into Chicago quoted enough lower at the mill to offset that freight disadvantage it had, then you might place the order just as well with the LaSalle Company; is that right?

A. Yes—yes, sir.

Q. It would depend on how you placed that f.o.b. mill, LaSalle might overcome the freight advantage by a lowered f.o.b. mill quotation; is that right?

A. I believe so; yes, sir.

Q. Now, on the system of identical bidding, of the delivered price basis: When you place the order by lot, and it happens to fall to the more distance mill among those that have bid, isn't that mill, in effect, reducing its mill price by the amount of its freight disadvantage?

A. It is the only conclusion I can come to, sir.

Q. Now, Mr. Leisure made some reference to asking you whether the Government, with its huge, monopolistic purchasing power, was not attempting to dictate to the sellers of cement how they should sell the product.

Now, considering the system of identically delivered prices that you described—

Mr. Leisure: I object to this description of system; there has been no—

10504 Mr. Wooden: You used that expression.

Mr. Leisure: There is no finding of any system about it.

Trial Examiner Norwood: Well, let Counsel finish his question and then we will discuss it.

By Mr. Wooden:

Q. (Resumed) What would you say as to whether the sellers were dictating to the Government, or to the buyer, as to the terms on which the business might be done between them?

10507 A. The submission of identical bids indicates on the face of it an agreement to maintain or to uphold certain figures. It is prima facie evidence—

By Mr. Wooden:

Q. I have particular reference—pardon me.

A. Of an agreement of some sort.

Q. I have particular reference to the industry's insistence upon quoting delivered as against f.o.b. mill. I
10508 want to know, in your opinion, whether the industry is dictating to the Government or the Government is dictating to the industry in that case?

A. Well, gentlemen, our—we have been very much disappointed in the results of the effort to secure bids f.o.b. mill on points east of Denver. The results have been negative.

Q. So whatever purchasing power the Government may have had, it wasn't equal to the power that was thrown against it?

Mr. Leisure: I object to that.

A. The question of power—

Trial Examiner Norwood: I think we all have heard enough, gentlemen, along this line. I will sustain the objection.

Mr. Wooden: I thought we went too far on the cross-examination, but it was permitted, and I think I ought to be permitted to go as far as they did.

Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Now, Admiral, Mr. Leisure asked you whether the Government would ever or could ever buy or would
10509 ever buy at higher than the prevailing market price. I believe you said no.

I will ask you whether the Government has sometimes been able to buy at lower than the prevailing market price?

A. With respect to cement?

Q. No, generally speaking.

A. That is a very broad question. Generally, the Government is able to purchase less than the prevailing market price.

Q. All right.

A. On practically all of its commodities.

Q. Now, Mr. Leisure also asked you whether you were not seeking to obtain the lowest available cost to the Gov-

ernment. You said yes, I believe. Referring to the identical delivered price bids that you have described, were they the lowest available cost?

A. We had no means of knowing.

Q. I mean, the lowest available cost to the Government if you purchased under them.

A. At that particular time, it was the only price we could get.

Q. In other words, the identical price was the lowest available cost?

A. Yes, sir.

Q. Is there anything new about the Government buying direct, buying cement direct from manufacturers? How long has it been customary to do so?

10510 A. Oh, the larger projects—on the larger projects, the Government has bought direct from the manufacturers for years, T. V. A. project, Boulder Dam projects, the Government has always bought direct from manufacturers.

Q. Well, how far back does your experience and knowledge of their buying direct from manufacturers of cement go?

Mr. Zimmerman: You will notice that he said it was limited to large projects.

A. My knowledge goes back about 30 years.

By Mr. Wooden:

Q. Does you answer apply to that period, the whole period?

A. Yes, it does; yes, sir. I can't recall of anything else.

Q. Has the Government been accustomed to buy other commodities direct from the manufacturers?

A. Always. Always.

Q. So far as cement is concerned, can you say whether or not the Government has bought for many years in quantities of a carload or more?

A. Oh, yes, it has for a number of years.

Q. For use in Navy yards, for example?

A. Not so much in Navy yards as on projects in the field.

Q. Now, Mr. Leisure was asking you some questions about after a contract was entered into for cement under this invitation of proposal of March 30th, that the

award might be made to another mill. Did you mean by any of your answers to imply that after the Government made a contract to buy cement that it could at will, or at its discretion, abrogate that contract and buy from another party?

A. I did not.

Q. Do you enter into general supply contracts for a large number of commodities where there is no obligation on the part of the Government to purchase under them?

A. A great many contracts are entered into, gentlemen, where the quantities are indefinite. They are sources of supply. There is a great considerable number. I should suppose, say, several thousand a year.

Recross Examination by Mr. Leisure.

Q. With respect to your statement to Mr. Wooden, you didn't intend to say that the Government would abrogate a contract? You don't want to spend time going over all your testimony that I went over this morning? There is nothing in that that you want to change at this time, is there, Admiral?

A. I do not recall.

Mr. Leisure: On page 10280 of the record, Mr. Wooden offered a part of Exhibits 1383, 1385, 1387, 1389, 1391, 1395, 1400, 1402, 1422, 1429, 1426, and made a similar offer as to 1381, 1418, and 1420.

This offer consists of a list of companies receiving certain invitations to bid, and it was so qualified as to leave out those companies that have bid.

In order to make the record complete, Your Honor, I would like to offer the balance of the exhibits, unless Mr. Wooden wishes to so offer them. In other words, a part of the exhibit being in evidence, I feel that the entire exhibit should be in evidence.

Trial Examiner Norwood: Yes.

What do you say to that?

Mr. Wooden: In so far as that merely covers the same point that the Admiral testified to, the effect that certain ones did bid, I have no objection.

Mr. Leisure: Very good.

Mr. Wooden: In other words, it completes the list, that is all, and part of it has been covered by his testimony.

Trial Examiner Norwood: They have Commission's identification numbers.

Mr. Leisure: I read them on the record, Your Honor.

10515 Trial Examiner Norwood: They will go in as Commission's Exhibits. You permit them to go in?

Mr. Wooden: I understand this is confined to the lists of concerns to whom invitations were sent, some of which bid and some of which did not.

Trial Examiner Norwood: Some of them are invitations themselves, I think the ones that he has read.

Mr. Leisure: These are the lists that I am talking about.

Mr. Wooden: I don't want to put the invitations in.

(COM. EX. 1404 was offered and received in evidence.)

10516 T. O. BRETHERTON, being called as a witness for the Commission, and being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

10517 I am general manager of the Allentown Portland Cement Company. The plant is located at Evansville, Pa., and the general offices are at Catasauqua, Pa. My office, general sales office, is located in Philadelphia. The officers of my concern are R. S. Weaver, president, Charles Breerwood, vice-president, A. E. Douglas, vice-president, and F. A. Weibel, secretary and treasurer.

I do not know anything about the operation of the Willowbrook plant in Catasauqua, Pa.; or about the 10518 affiliation of that company with the Allentown Portland Cement Company; or about the organization of the Valley Forge Cement Company. I do not know who the officers of that company (Valley Forge) happen to be. I do not know and I am not acquainted with the fact that F. A. Weibel is also secretary and treasurer of 10519 that company. I am not sure that I am acquainted with Mr. Douglas as an officer of that company also. I am not sure, I do not know, that I am acquainted with the fact that C. H. Breerwood is an officer of that company. I do not know that I have heard them state that

they are. I have been general sales manager of the Allentown Portland Cement Company since the latter part of 1926.

Q. Do you know whether or not as a fact that it
10520 is the sales agent of the products of the Valley Forge Cement Company?

Mr. Leisure: I object to Counsel testifying in this way for the record. It is not a proper way—.

Trial Examiner Norwood: Have you finished your question?

Mr. MacIntyre: I have.

Mr. Leisure: There is a proper way to bring out this kind of testimony, and I object to it.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: This is not a Respondent, this Allentown Portland Cement Company, is it?

Mr. MacIntyre: Valley Forge is a Respondent. I am asking him if he knows whether his concern is a sales agent of a Respondent.

Trial Examiner Norwood: I think he can answer that. The objection is overruled.

I will ask the Counsel not to lead the witness.

A. Mr. MacIntyre—

Trial Examiner Norwood: Unless it seems to justify it.

A. (Continuing) —the knowledge I have of that is that the Allentown Portland Cement Company sells the product of the Valley Forge Cement Company. I cannot say that they are a sales agent.

10521 By Mr. MacIntyre:

Q. You don't know what the arrangement is under which they do sell the products of the Valley Forge Cement Company?

A. No.

Q. You have no knowledge whatever of that arrangement?

A. No.

Q. You do know that there is an arrangement under which produce of the Valley Forge Cement Company is sold, though?

A. Yes.

Q. Do you know of any way products of the Valley Forge Cement Company are sold except through the sales of the Allentown Portland Cement Company?

A. I know of no other article—

Q. Do you know whether or not the Allentown Portland Cement Company does sell all the products of the Valley Forge Cement Company?

A. The only one I know is the sales of cement.

Q. Do you know whether or not the Allentown Portland Cement Company sells all of the cement produced by the Valley Forge Cement Company?

A. Yes.

Q. Under some sort of an arrangement which you say you do not know anything about?

A. Yes.

Q. But you do know they sell it for the Valley

10522 Forge Cement Company?

A. That is correct.

Q. During the term of your sales managership of the Allentown Portland Cement Company, has it, at any time, been a member of the Cement Institute, a party to this proceeding here?

A. I believe so.

Q. What has been the term of that membership?

A. I do not know.

Q. Well, give it to us the best you can. Do you know whether or not they joined in 1929, at the time it was organized? If so, how long a period have they been a member?

A. I do not have those figures, Mr. MacIntyre.

Q. Do you know of your own knewledge whether they were a member in 1930 or 1931?

Trial Examiner Norwood: Do they belong now?

The Witness: I do not know that, Mr. Norwood.

Trial Examiner Norwood: You don't know whether they belonged during the code?

The Witness: I believe so.

Trial Examiner Norwood: Go ahead.

10523 By Mr. McIntyre:

Q. Did they belong during 1930?

A. I do not know.

Q. Did they belong during 1931?

A. I do not know.

Q. You have no recollection of any membership of the Allentown Portland Cement Company in the Cement Institute as of that period?

A. As of that period. I know they belonged.
Q. As of that period?
A. But I don't know the dates or time, Mr. MacIntyre.
Q. Do you know whether or not they belonged during those two years, 1930 and 1931?
A. No, I do not.
Q. You do not know?
A. I do not know.
Q. Do you recall having discussed the Allentown Portland Cement Company membership in the Institute with its general manager, that is, the general manager of the Cement Institute, Mr. L. C. McConnell during 1930 and 1931?
A. The general manager of whom?
Q. Of the Cement Institute, Mr. L. C. McConnell. Do you know him?
A. Yes, I have met him.
Q. Do you recall having discussed with him during 1930 and 1931 any problems at all concerning the
10524 Allentown Portland Cement Company's membership in the Cement Institute?
10525 Trial Examiner Norwood: Answer that question.

By Mr. MacIntyre:

Q. Can you answer that question, Mr. Bretherton?
A. No, I have no recollection of the incident.
Q. Well, of any instances you have had any dicussions with Mr. McConnell concerning that matter?
A. I cannot remember it. I might have, but I cannot remember.
Mr. MacIntyre: Will you mark these for identification?
(The documents referred to were marked Commission's Exhibits Nos. 1429-A to 1429-L, inclusive, for identification.)

By Mr. MacIntyre:

Q. I show you documents which have been
10526 marked for identification Commission's Exhibit 1429-A to -L, inclusive, referring to 1429-A, and I ask you to examine that and state whether or not that refreshes your memory and recollection on the point as to whether the Allentown Portland Cement Company during

1930 was a member of the Cement Institute, and whether or not during that time you discussed with Mr. Luther McConnell, its manager, any of the activities of the Cement Institute?

10527 Trial Examiner Norwood: Now, I will ask the witness,—do you recognize what that paper is?

The Witness: I beg your pardon?

Trial Examiner Norwood: Do you recognize what that paper is, Commission's Exhibit 1429-A?

The Witness: 1429-A?

Trial Examiner Norwood: Yes.

The Witness: It is a letter from me to the president of our company.

Trial Examiner Norwood: Yes. Well, before you answered it, I wanted to look it up.

Answer the previous question.

Mr. MacIntyre: I will continue with another question.

Trial Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Do you recognize Commission's Exhibit 1429-B to L, inclusive, as photostats of the documents referred to in Commission's Exhibit 1429-A?

A. Well, I can only assume they are correct; they are on our letterhead. There is no signature on them to identify them as from my office. I note in the letter, however, it states that "the attached Institute sheets."

Q. Well, going back to Commission's Exhibit

10528 1429-A, I will ask you whether that refreshes your memory and recollection on the point as to whether the Allentown Portland Cement Company was as of that time a member of the Cement Institute.

A. I would say so.

Q. I will ask you this, Mr. Bretherton: Can you state whether or not during 1930, and at a time when the Allentown Portland Cement Company was a member of the Cement Institute, that you had in a meeting with its general manager, Mr. Luther McConnell, at which you discussed with him, and other members of the Cement Institute, the matter of contract checking, and the matter of the status of various contracts that had been checked.

A. From that letter, it would indicate that I did.

Q. Well, does that refresh your memory and recol-

lection on the point,—Commission's Exhibit 1429-A,
10529 that you have identified as a letter from you to your president,—does that refresh your memory and recollection on the point as to whether or not you did?

A. Well, I have said, Mr. MacIntyre, that it would indicate that I did. I don't know whether it is refreshing my memory; evidently I have given you the best answer I have.

Trial Examiner Norwood: Do you have an independent recollection regarding those matters?

The Witness: Mr. Norwood, I have no recollection of the meeting at that time. The facts are there (indicating Exhibit 1429-A), and no doubt I was there, but I haven't any—there isn't any outstanding thing in my mind that I would remember.

Mr. Zimmerman: The five minutes is up.

By Mr. McIntyre:

Q. What are the facts that you spoke about as being there, and where are they, Mr. Bretherton?

Mr. Leisure: I object to that, the exhibit is not in evidence. He asked him what these facts are.

Mr. MacIntyre: The facts that he referred to in his testimony just one moment ago.

A. I don't understand—

Trial Examiner Norwood: It is not clear to me; what facts?

The Witness: You mean in the letter?

10530 Mr. Wooden: Simply a question, when he said the facts are there, of what he meant by the word "there."

Trial Examiner Norwood: Oh, what he meant—

The Witness: I meant the facts set forth in the letter.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: We offer in evidence at this time Commission's Exhibits, for identification, 1429-A to L, inclusive.

Mr. Leisure: We object to the exhibits now being offered on the ground that they are incompetent, irrelevant and immaterial, and on the further ground that it is an inter-office communication between parties who are not respondents to this action, and are, therefore, not binding on the Respondents in this action.

Mr. MacIntyre: Your Honor please, while Counsel are

looking this exhibit over, I might, in answer to Mr. Leisure's objection, make this observation:

That the record shows—and if Your Honor cares to he can check that point in Commission's Exhibit 136—the Allentown Portland Cement Company at the time of the writing of this letter was a member of the Cement Institute. The letter itself deales with collaboration of this witness as a representative of the Allentown Portland Cement Company, at that time a member of the Institute,
10531 with other members of the Cement Institute, and its general manager, on one of the Institute's activities, and, further, the witness, by his testimony, has established the Allentown Portland Cement Company as a sales agent of one of the Respondents in this case, the Valley Forge Cement Company.

Mr. Leisure: That, your Honor, would not make this witness'—

Trial Examiner Norwood: I shall overrule the objections and admit these exhibits.

I think the record shows that this company was in conference with the others regarding the subject matter of this suit and participated in these activities with the others. I will let it in with that understanding, that the whole record shows that connection.

Commission's Exhibits 1429-A to L are admitted.
10532 COM. EX. 1429-A to 1429-L, both inclusive, was offered and received in evidence.)

10533 The witness identified Com. Ex. 1430 as his memorandum to Mr. Weaver. His initials are at the bottom of it. The witness recognizes his initials at the bottom of it.

Q. Can you fix the date, the approximate date on which that was written?

A. No, I cannot.

Q. Well, within—

A. Mr. Butcher was a customer of ours here in Washington, a brick mason, and I am trying to refresh my memory, that we were having trouble meeting the competition in Washington market due to the fact that we didn't have a storage bin here; and Mr. Butcher had always bought his cement from us.

Q. Is that 1930?

A. Well, I couldn't definitely specify the time, Mr. MacIntyre.

10534 Q. Would you say 1929 or '30?

A. Evidently as I get it from this, the International Company had a property that Butcher was interested in or wanted to rent. That is the only construction I can put on this.

Q. You can't fix the date of this, though, as of 1930, during the year 1930 or 1929?

A. No, there is no date on it and I don't remember. I couldn't specify the date, Mr. MacIntyre.

Mr. MacIntyre: We offer this in evidence, Your Honor.

By Mr. MacIntyre:

Q. I believe, Mr. Bretherton, you stated that Commission's Exhibit 1429-A, that letter that was signed by you, that that was your signature at the bottom of it?

A. You mean the first one?

Q. Yes.

A. Yes.

Mr. Leisure: Mr. MacIntyre, have there been any identification testimony of the initials "F. O. B." at the bottom of this?

Mr. MacIntyre: There is "T. O. B.," the witness' initials. He so identified them. He identified that as a memorandum from him to the president, Mr. Weaver.

Mr. Leisure: Without going into the contents or
10535 taking the time to read it, at the moment, I make the same objection, that it is incompetent, irrelevant, and immaterial, being a communication, an inter-office communication between two parties who are not Respondents in this action, and, therefore, not binding upon any of the Respondents.

(COM. EX. 1430 was offered and received in evidence.)

Mr. MacIntyre: That is all, Mr. Bretherton.

Cross-examine.

Mr. Leisure: No questions.

10536 Washington, D. C.,
November 9, 1938.

10537 EVERETT H. MacINTYRE was thereupon re-
called as a witness for the Commission, and, having
10538 been previously sworn, testified further as follows:

Direct Examination by Mr. Wooden.

The witness identified Com. Ex 1429 A to L as photostats of papers which were found by him in the files of the Allentown Portland Cement Co., at Catasauqua, Pa., during the early part of October, 1931. The papers were all attached together at that time, and Mr. Weibel, Secretary and Treasurer of the Allentown Portland Cement Co., permitted him to examine the files of the company, at that place, at that time, and described them as a report received by him from his Philadelphia, Pa., sales office.

Mr. Wooden: I think that is all.

JOSEPH BROBSTON, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

10539 I am President of the Hercules Cement Corporation and have been since the Spring of 1933. Prior to that time I was not connected in any way with
10540 the Hercules company. I went with the Dexter Portland Cement Company on June 15, 1900 and was with that company until it was sold in 1926 to the Penn-Dixie. From 1926 until the time I went with the Hercules Cement Company I was connected with the Nazareth Cement Company. I went with the old Dexter company as a bookkeeper. I was later on made secretary and treasurer and I was vice-president and general manager at the time the company was sold.

10540 Q. Has there been a time within your experience when the sales of the company that you were connected with at the time were made f. o. b. mill rather than on a delivered basis?

A. I don't know exactly what you mean by that question. Back in 1900 I think that we billed our sales agent, How they billed it, I don't know.

Q. You billed your sales agent f. o. b. mill, you mean?

A. We billed the sales agent at an agreed-on price, yes.

10541 Q. Was it f. o. b. mill, or what?

A. Well, it was a price at the mill, yes. I mean, we had a definite price which we agreed to sell this sales agent, Samuel H. French & Company of Philadelphia.

Q. At the mill? A price at the mill that you agreed to sell it?

A Well, it was so much per barrel for the cement at the mill. I mean, they attended to all the delivery charges. I don't know what their practice was.

Q. Can you say whether that was the method of billing that was followed by others in the industry at that time?

A. I don't think that there were many of the other companies that had the sales agent. I think most of them billed direct. I have no knowledge of how Samuel H. French & Company billed to the customers.

Q. But so far as billing direct, as you refer, to it, whether that billing was on an f. o. b. mill basis or delivered?

A. We billed our sales agent at a definite price. How they billed their customers, I couldn't tell you, Mr. Wooden. I am sorry.

Q. I understand. I mean others in the industry which you say billed direct.

A. I don't—well, the other—

Q. Whether they were—

A. The people who didn't have any sales agents

10542 I presume billed their companies—their customers direct.

Q. F.o.b. mill or delivered?

A. I don't know that.

Q. Was there a time within the history of the Hercules Company when it sold cement for delivery in a much wider territory than it now does?

A. Not since I have been connected with the company.

Q. Do you know anything about the history of the company on that point?

A. I do not, no, sir.

Q. Do you recall knowing, as a matter of history of

the company of which you are now president, that at one time it shipped cement west of the Mississippi River and into the deep South?

A. The Hercules Company?

Q. Yes.

A. I have no knowledge of that at all, sir.

Q. Did you or did you not state to Mr. Travis Brown, a representative of the Federal Trade Commission, that at one time the Hercules Company did sell in the territory that I have indicated?

A. I am very sure I did not, no, sir, because I had no knowledge of it.

Q. What is the general territory in which the Hercules Company now makes sales?

10543 A. Generally speaking, they ship into Rhode Island, Massachusetts, and Connecticut, the southeastern section of New York State, the eastern section of Pennsylvania, New Jersey, parts of Delaware, parts of Maryland, and to the District of Columbia.

10544 Q. Is the larger part of your sales in that area?

A. Practically our entire sales are in that area.

Q. I say, is the larger part of your sales, then, made to dealer trade, or, to what classes of trade?

A. Generally to the dealer trade.

Q. Has your company at some time, or during some period, sold an important part of its output to any other cement manufacturer?

A. Oh, yes.

Q. Will you state who they were and what they—

A. The Vulcanite Cement Company we have sold—almost all of the cement that the Vulcanite Cement Company shipped—to them in the period of the past five or six years.

Q. Is that still true?

A. That is still true; yes, sir.

Q. What proportion of the Hercules Company's sales does that represent?

A. What did you say?

Q. What proportion of the Hercules Company's sales does that represent?

A. Last year we sold—I am just giving you round figures—last year we sold approximately 800,000 barrels to direct Hercules customers and approximately 500,000 barrels to the Vulcanite Cement Company.

Q. What proportion was that of your total sales?
10545 A. Well, five to eight.
Q. You gave the basic figures before?
A. I gave the approximate figures.
Trial Examiner Norwood: Then they sold the smaller amount to the Vulcanite?
The Witness: Yes, sir.

By Mr. Wooden:

Q. Do you have any commitments from Vulcanite to take any particular amount from you, or just as they may order it and want it?
A. Well, it is a contract that was made by Mr. Kind before his death. The contract provided that they would take all of their requirements of Standard Portland Cement from the Hercules Cement Company. I believe they bought some cement from other sources.
Q. But were the requirements specified as so many barrels, or just whatever the requirements might be?
A. No, there was a specification, as I recall it, that the Hercules Company could cancel the contract if they took less than a certain amount.
Q. What was the amount?
A. I don't remember that. My impression is it was something around 400,000 barrels.
Q. Yes.
A. But I mean the first year that that contract
10546 was in effect they took only some—between two and three hundred thousand barrels—but I don't remember. That contract is available; it has been on file.
Q. How long is that arrangement to run?
A. The original contract bound the Hercules Cement Company for a period of five years; but Vulcanite had the right, if they did not notify the Hercules Company before a certain time—Vulcanite had the right not to continue with the contract after a year.
Q. I mean, from the present time, how long has it to run?
A. It is just simply at the will of the two cement companies—
Q. I see.
A. —today,—the original five-year period has expired, but they continued to purchase from us.
Q. Do you ship for Vulcanite, in Vulcanite bags?
A. Yes, sir.

Q. That has been the arrangement all along, has it?
A. Yes, sir.
Q. Mr. Brobston, showing you Commission's Exhibit, for identification, No. 1321,—what do you know about that pamphlet (showing paper to witness)?
A. Nothing at all, Mr. Wooden.
Q. Have you ever seen it before?
A. I saw a copy of it. I think somebody brought
10547 my attention to it when it was mentioned in one of your exhibits, and I was shown a copy of it then.
Q. You never saw it before it was mentioned here?
A. No.
Q. And received—
A. No, not until it was mentioned here.
Q. You do not know whether—or you don't know anything about its preparation or distribution?
A. Nothing at all, sir—I am sorry.
Q. Who brought it to your attention recently?
A. I really couldn't tell you, but it was mentioned in the testimony here, and they told me that it had been mentioned, so I asked them to give me a copy—to get me a copy of it, and I read it—at least I read a part of it, I looked over it.
Q. Was it drawn to your special attention?
A. No, it was simply because it was some one connected with the Hercules that it was mentioned in the testimony, that was all; someone in the office told me it had been mentioned; I have forgotten who it was.
Q. Do you have some officials, or highly placed employees in your corporation, that have been with the Hercules Company for as long as fifteen to twenty years?
A. There is a Mr. MacCarey, traffic man, and the traffic man has been there for that long, and Mr. Herbert
10548 Coffman, our technical adviser, has been there for that long. Those are the only two that I recall.
Q. No officers of the company?
A. No.
Q. And the traffic man, Mr. MacCarey, has been with you continuously during a period of how long, can you state?
A. My impression is that Mr. MacCarey was there from the time the Company started,—has been there ever since I have been there, of course.
Q. What are his initials, and first name?

A. His—I don't now, I don't remember—it is Charles, but I don't remember his middle initial; but that can be gotten readily enough. He is purchasing agent. I think that you can find it in any of the records.

The Reporter: How do you spell the name "MacCarey"?

The Witness: M-a-c-C-a-r-e-y.

The Reporter: And the name "Coffman"?

The Witness: C-o-f-f-m-a-n.

Q. Does Mr. MacCarey have anything to do with the selling end of the business?

A. No, sir.

Mr. Wooden: Will you please mark these papers for identification.

(Thereupon, the papers referred to were marked for identification as Commission's Exhibits 1431, 1432,
10549 1433, 1434, 1435, 1436, 1437-A, 1437-B, 1437-C, 1438-A, 1438-B, 1438-C, 1438-D, 1438-E, 1438-F, 1438-G, 1439, 1440, 1441-A, 1441-B, 1442-A, 1442-B, and 1443.)

10550 The witness identified Com. Ex. 1431 to 1443, inclusive, as instructions and copies of instructions issued to the salesmen, by the sales manager, presumably, of the Hercules Co. "When Mr. Brown was there, he looked through the book and told us what he wanted, and we give them to him, and I presume these are the copies of them." He has no reason to believe otherwise. He has no doubt at all that they are Hercules.

Mr. Wooden: Your Honor, I will offer those exhibits in evidence, Commission's Exhibits 1431 to 1443, inclusive.)

(The exhibits above referred to were handed to Mr. Leisure.)

By Mr. Wooden:

Q. Did you have a sales manager by the name of E. B. Good?

A. Yes, sir.

10551 Q. The particular point, Mr. Brobston, is whether those are papers, including 1931 which you gave to Mr. Brown?

A. Well, Mr. Kind had what he called the black book, which I found there when I went there, which had these different sales memoranda, and when Mr. Brown came to

see us, I simply turned the black book over to him, and he picked out the papers that he wanted, and I had the stenographer copy them and send them to him. That is all I can tell you about them.

Q. These are the copies?

A. As far as I know. I can't remember that, Mr. Wooden.

Q. You believe them to be?

A. I imagine they are, yes.

10552 Mr. Wooden: Referring, however, to Mr. Leisure's objection, these are a series of price instructions for the benefit of the salesmen of the Hercules Company issued during that period of time, 1931 to 1936, and the witness has already testified that Mr. Brown selected from a black book that had been kept the papers, and that copies were furnished him, and I believe he said that he imagines that these are the same ones.

The Witness: Why, I have no doubt of it.

10553 (COM. EX. 1431 to 1443, inclusive, were offered and received in evidence.)

10554 Q. Can you say, Mr. Brobston, about when it was that Mr. Travis Brown called on you?

A. I couldn't give you the date, but I think—

Q. Well, about?

10555 A. I have some letters that show it I think a year or a year and a half ago, somewhere around there.

Q. Would you say as long as about two years ago, possibly?

A. It might be.

Q. Say, in November, 1936?

A. I shouldn't wonder that that might be it. I don't remember it.

Q. Did you deal yourself with Mr. Brown?

A. I had a nice talk with Mr. Brown, yes.

Q. And you permitted him, as I understand it, to examine this so-called black book and make selections from it?

A. Yes, sir.

Q. And did the black book contain such things as sales instructions to—

A. Well, that is—

Q. —to salesmen?

A. It contained material as you show in these exhibits.

Q. Yes. Is Mr. Good still your sales manager?

A. No, sir. I am sorry to say Mr. Good is incapacitated. He received—he had a stroke and then had another stroke, and he has been replaced by another sales manager. His health is not such—

10556 Q. He was the sales manager?

A. He was the sales manager; yes, sir.

Q. As late as 1936?

A. '36? Well, I can't say that Mr. Good was very active even in '36. He had—his illness, I think, started before that.

Q. Well, I show you Commission's Exhibit 1443, which carries Mr. Good's name.

A. Oh, yes.

Q. Underneath, in January, 1936.

A. Yes. The point was this: As I say, while Mr. Good continued as sales manager for some little time after he was incapacitated, I don't know whether he could give you any information himself on those points.

Q. Referring to Commission's Exhibit 1442, I note the instructions "For Buffalo, N. Y., delivery, the Buffalo mill base plus 20 cents per barrel minimum freight rate."

Do you know what the 20 cents represented?

A. May I see that?

Q. Yes (handing the witness the exhibit referred to).

A. No, I don't know.

Q. Can you say whether it was a switching charge within the Buffalo district?

A. I couldn't tell you. I am sorry. I am not familiar with the details of that kind.

10557 Q. Referring to Commission's Exhibit 1442-A, that contains a number of base-point prices at different basing points (handing the exhibit referred to the witness).

It was your custom, was it not, to have your salesmen calculate delivered prices by using the base prices plus freight from the base point?

A. Yes, sir.

Q. I note on the same exhibit, Commission's Exhibit 1442-A, a statement that "Effective August 1, 1932, deliveries to customers' trucks at our plant discontinued."

Was there a time prior to that date when your company had a fleet of trucks and trailers for the delivery of cement?

A. Let me see that.

Q. Or is that prior to your experience?

(The exhibit referred to was handed to the witness.)

Q. Before your connection with the company?

Mr. Leisure: The witness has already testified that that is prior to his connection with the company.

The Witness: I just wanted to check the date.

Mr. Leisure: As far as that goes, Your Honor.

The Witness: That is 1932. I am not familiar with it prior to that time.

By Mr. Wooden:

10558 Q. But it appears to be on a sales instruction dated January 6, 1936?

A. Oh, yes. I have seen Hercules trucks passing through, naturally, so I know they have have trucks at one time. That was not when I was connected with the company.

Q. When you were connected with Nazareth, which I believe included the period of August, 1932—is that right?

A. Yes.

Q. —did you know whether or not Hercules did have a fleet of trucks and trailers for the delivery of cement?

A. I don't know that they had a fleet. I have seen trucks passing through Nazareth with Hercules cement on it, and I know as a matter of general knowledge that they did deliver cement by trucks. That is all I can tell you about that. That was because I live in Nazareth, not—I saw them passing through the town.

Q. Yes.

Did the Nazareth Cement Company also deliver by truck at that time?

A. I don't know whether they did at that time or not. I was not—I had nothing to do with the sales end of the Nazareth Cement Company.

Q. (Handing paper to witness) I note in Commission's Exhibit 1442 the sales instruction of January 6, 1936, in reference to instruction G-5, "How to figure
10559 prices,"—do you know what that was,—the G-5 instruction?

A. No, sir; I don't. I rather imagine it must be there.

The witness was shown a paper marked for identification Com. Ex. 1444 and was asked whether ((it)) is one of the G-5 instructions on how to figure prices of the Her-

cules Company. He said: "Well, it says here 'Cancel 95'; I presume it is the same." The date of "this"
10560 is January 24, 1931; he has no personal knowledge of that at all. He sees the handwriting in the lower right hand corner; it looks to him ((like)) Mr. Good's initials,—"E. B. G." The witness would say that it was his handwriting. The witness did not think that "this"
10561 was among the documents that he permitted the Commission's examiner to take from his files, because the others were in "this" form, the ones he gave to Mr. Brown were in this form.

"Mr. Wooden: I can account for that; Mr. MacIntyre obtained it on a previous occasion.

"The Witness: Oh, well, that might be, yes.

"Voir Dire Examination by Mr. Leisure: These look like the initials of Mr. Good to him."

Mr. Leisure: We have no objections, Your Honor.

Trial Examiner Norwood: It may be received.

(Mr. Leisure hands Commission's Exhibit 1444 to Mr. Zimmerman, who examines it.)

Mr. Leisure: We do ask, however, that the exhibit be confined to the defendants against which it is now being offered, and that it not be received as against the
10562 other Respondents.

(COM. EX. 1444 was offered and received in evidence.)

Direct Examination by Mr. Wooden (Continued)

Q. Referring to Exhibit 1431, Mr. Brogston, reference is made therein to destination prices of Hercules cement for Buffalo, N. Y., and nearby points, and stating that those points were now based on the all-rail rate. Do you know of a time when shipments from your plant were ever based on anything but the all-rail rate to Buffalo?

A. I don't know, Mr. Wooden.

Q. Do you have any means of delivering in Buffalo other than by rail?

A. No.

Q. Or possibly by truck?

A. No; we never trucked to Buffalo. That would be too far from our mill.

Q. You always shipped by rail, as far as you know?

A. As far as I know, yes.

10563 Q. Do you know anything about any time in which the Buffalo delivered price was anything other than base plus freight?

A. You mean that some time there was an arbitrary at Buffalo? There may have been, but I don't know.

Q. You don't know anything about that. All right. Now, referring to Commission's Exhibit 1439A, which is a circular of instructions dated April 23, 1935. That was during your connection with the company, was it not?

A. Yes.

Q. There is an instruction there: "For delivery to Norfolk, Berkley, and Portsmouth by adding 8 cents per barrel switching charge to the Norfolk base price."

Do you know how that 8 cents a barrel switching charge came to be adopted by your company?

A. I am sorry but I don't know. I don't remember ever shipping anything to either Norfolk or Portsmouth, but it may have been.

Q. Wouldn't you say that the cost of switching per barrel would depend on the number of barrels in the car?

A. I don't know that. If it were a straight switching charge, the per-barrel charge would be, but I don't know what that 8 cents is, Mr. Wooden.

Q. It says "switching charge.".

A. It may be. That, I don't know.

Q. Does your company sell a substantial part 10564 of its cement on what are known as specific job contracts?

A. We sell quite a substantial part. I don't know how much, what proportion, but it is quite substantial.

Q. A number of such sales is a frequent occurrence in your organization?

A. Oh, yes, yes, sir.

Q. Are those specific job contracts options for the dealer to take a certain quantity up to a certain amount at a certain price, or what is the arrangement?

A. The contracts are supposed to be specific in that the cement covered by that contract are to be supplied only on a certified specified job. That is why they are called specific contracts.

Q. The dealer is not required to take any particular amount under any such contracts?

A. He is supposed, and, really, I would say is in honor

bound to take the amount specified by that contract if it goes on the job. If it doesn't go on the job, we have never forced them to take it.

For instance, if they make a mistake in the amount of the contract and place a contract for more than that particular job requires, we don't expect them to take more than—

Trial Examiner Norwood: You don't permit him to take it, do you?

10565 The Witness: No, sir; not on that job. We probably would be glad to sell him, generally.

By Mr. Wooden:

Q. Do you not quote to the dealer, frequently, on a proposed contract for a specific job? That is, in advance of the letting of any contract or before the dealer has the contract?

A. If we think a dealer is going to get a contract, our salesmen would probably call on him and ask him to give us the contract, if he gets it.

Q. Is that covered for a period of 15 days?

A. Yes, approximately.

Q. And on such quotations the dealer is not bound to take any particular amount at all?

A. Oh, not on a quotation. We quote him on this job but the dealer may not get the job.

Q. Isn't is a fact that that is quite a general practice in the industry as you know it and understand it?

A. To quote dealers on jobs that the cement companies think dealers will get?

Q. Yes.

A. Yes, it is quite a general practice.

Q. And without knowing how much or if any would be required by that particular dealer?

A. They don't quote unless they know what the approximate amount of the contract is, and they only

10566 quote in the cases where the dealer is attempting to get the contract, so if the dealer does get it they will get the cement.

Q. But there is no assurance any dealer will get the cement who is quoting?

A. There may be five or six dealers quoting on it.

Q. Did your company quote the Federal Government recently on proposals that didn't specify the exact amount that the Government would take?

A. I don't recall our quoting on them except where there was an exact amount.

Q. Was your company among those that were named by Admiral Peoples in his testimony last week as not submitting any bids?

A. I didn't read the Admiral's testimony; I am sorry.

Q. Did you hear him? I thought you were here.

A. No, I didn't read his testimony.

Q. You weren't here part of the time.

Has the Hercules Company been operating on a basis of using the Northampton base price within the territory where it, coupled with the freight, made the lowest delivered price?

A. Yes; ever since I was in the business we have done that.

Q. That has sometimes been referred to as the Lehigh Valley base?

A. Yes.

Q. And how far is your plant from Northampton?

A. Oh, I would say maybe ten or twelve miles.

10567 Q. In selling in Northampton, do you add a switching charge up to,—what is it, 19 cents, or—

A. If we were selling in Northampton?

Q. Yes.

A. We have never sold any in Northampton, but I presume whatever we found was the going price in Northampton we would quote. What that would mean, I don't know.

Q. That would involve the adding of the switching charge, whatever it was, from your mill.

A. I don't know there is a switching charge to Northampton or not, Mr. Wooden.

Q. Did you note in any of those exhibits sales instructions, anything of that sort?

A. I didn't read them. You could probably tell me if there is one there. I didn't read them.

Q. Does Northampton quote for delivery in your mill town?

A. In Stockertown? I don't know. They may have. I don't know.

Q. Well, do other mills sell for delivery in Stockertown?

A. I should say they would, yes; if there is any demand for it there. It is a very small town, though.

Q. That is in New Jersey, isn't it?
A. No, Pennsylvania; a little town about three or four miles from Nazareth.
10568 Q. Commission's Exhibit 1439, April 23, 1935, instructs, "When figuring on Northampton base in quoting, use a minimum freight charge of 20 cents a barrel." Do you know what that 20 cents a barrel was for?
A. No, I am sorry; I don't.
Q. Has the Northampton base been $1.65 for some years; net, I mean, without any bags or discount?
A. It is not $1.65 at the present time; it is $1.55, Mr. Wooden.
Q. That is quite recent—
A. Prior to that it was $1.65, but I don't know what date that base went in.
Q. About when did that $1.65 base go in?
A. About three or four months ago.
Q. And then $1.65, was that in effect for some years prior to the change?
A. I think at least two or three years. I don't remember the date it went in.
Q. In your sales to the Vulcanite Company, have you made them a price of 60 cents a barrel?
A. Of what?
Q. Of 60 cents a barrel?
A. The price was never 60 cents a barrel under that contract.
Q. What was it?
10569 A. The original price that Mr. Kind made was what he figured his actual cost and the contract provided that as the cost of coal or the cost of labor went up and down, that the price paid by Vulcanite would vary with that figure. That was so he wouldn't sell the Vulcanite at less than cost. He was willing to sell at cost to increase the output, but not at less than cost.
10570 Q. What is the present price at which the Vulcanite purchases cement from you?
A. Eighty cents; that is on standard Portland cement.
Q. Yes.
A. Other cements they pay us more for.
Q. And it has been as low as 60 cents?
A. No, never.
Q. Has it been below 80 cents at any time?

A. Oh, yes. As I said to you, the original amount shown in the contract was 65 cents, which was to be varied with the cost of the coal and labor. Well, coal and labor has gone up, not down, so it always has been above 65 cents.

Q. Can you say how long the 80-cent basis has been in effect?

A. Oh, that only went in the first of this year. Before that it was, I think, 82 or—it averaged 82 or 84 cents.

Q. Mr. Brobston, is the plant of the Hercules Company one of the older plants in the country?

A. No. I think that the Hercules started around, well, not earlier than 1912, '15, '17, along there. It was
10571 one of the newer plants in that section.

Q. At that time?

A. Yes, sir.

Q. You have just one plant?

A. Yes, just one plant.

Q. Referring to this price to the Vulcanite Company, did that include an allowance for your selling expense?

A. No, sir. The idea was that by the extra amount of manufacturing we would lower the costs of our own cement, so we practically sold it to Vulcanite at cost.

Q. And without any allowance for selling expense?

A. No allowance for selling expense at all.

Q. Now, coming back for a moment to my question awhile ago as to whether or not the Hercules Company had ever sold cement west of the Mississippi River and into the deep South, I will modify my question to ask you whether the Dexter Company which you were long connected ever made sales in such territories?

A. Yes, sir.

Q. And about when did such sales in such territories cease?

A. Pretty early, 1902 or '03, along there, I think when cement plants were built in sections that were nearer than ours, where we couldn't reach them.

Q. And at that time, as I understand it, the Dexter Company was selling to jobbers?

10572 A. To a general sales agent, and the general sales agent, in turn, sold to jobbers.

Q. And you sold to such people f.o.b. your mill, and they took care of the transportation?

A. Well, we sold to the sales agent, and he disposed

of it at a fixed price. Now, how he billed it, I don't know, Mr.. Wooden.

Q. Well, I am not asking you how he billed it, but how you handled it to him.

A. We billed at a certain fixed price to him each day. At the end of each day, we billed him on a certain price.

Mr. Leisure: Your Honor, this is back in 1902. It seems to me we are going pretty far afield on this.

Mr. Wooden: The history of this whole present situation is bound up in the question, Your Honor. We want to find out when this method of pricing began. I understand that their method now is to sell to a general sales agent.

The Witness: Well, we sell our own cement now.

By Mr. Wooden:

Q. Direct to dealers?

A. Yes, sir.

Trial Examiner Norwood: Yes.

By Mr. Wooden:

Q. The last question I asked you I want to get perfectly straight, Mr. Brobston, as to whether at
10573 that time when you were selling to the sales agents, you sold them outright. Did you?

A. Yes, sir.

The Witness: I was with the Dexter Cement Company at that time.

Trial Examiner Norwood: Yes.

The Witness: Not the Hercules; with the Dexter Cement Company at that time.

10576 By Mr. Wooden:

Q. Some of these sales agents to which you sold at that time, I take it, were located out beyond the Mississippi River?

A. No, I can't—I haven't made myself plain, Mr. Wooden.

Q. I see.

A. The Samuel H. French & Company of Phila-
10577 delphia had a contract to take our entire output. Now, I know the price at which we billed Mr. French, but I don't know how Mr. French billed his customers, and that is not a general practice in the industry, because

while we had a general sales agent, a great many of the companies were selling direct.

Q. Well, I am not concerned particularly with whether they sold direct or not, but as to the practice at that time of the Dexter Company, the price you made to your sales agent.

A. Yes.

Q. It was billed f.o.b. mill, was it not?

10578 A. The price we made our sales agent was billed—

Trial Examiner Norwood: I think we have gone into that once; he has explained that thoroughly.

By Mr. Wooden:

Q. And it was up to them to decide where it was to be shipped?

A. They directed us where to ship it, but they did the billing, and how they billed the customers, I am sorry, but I don't know, Mr. Wooden.

Q. Did you have different prices at your mill in effect to your sales agent, depending on the territory into which it was shipped?

A. I don't think there was any special price in any particular territory. He would come to us and say he couldn't get a specific job at a said place and ask us to make a special price, at times. The competition was such that he couldn't get it at that price.

Q. Then you had different mill prices in effect depending on the territory where the cement was to be shipped?

A. I wouldn't say it depended on the territory so much as it did on the particular job that was being followed.

Q. What is the capacity of the Hercules mill?

A. About 2 million barrels.

Q. Within the last seven or eight years, what has been the range of your production to the capacity?

10579 A. Within the last seven or eight years?

Q. Yes.

A. Well, we will ship this year, and did for the last two years about a million, three hundred thousand barrels. That is about what we manufactured in the last three years. It was a little less than that the year before, and in 1932, before Mr. Kind made the contract with Vulcanite, I think they shipped only about between five and six hundred thousand barrels. That is from recollection, however.

Q. Have you been interested in the question as to

whether shipments and sales of your company were in line with the shipments and sales that were being made by the industry generally?

A. I have always been interested in that ever since I went in the business, Mr. Wooden.

Q. Have you depended on Mr. Mallory's statistics for information of that kind?

A. No, sir. Before Mr. Mallory ever came into the cement business I used the figures of the Bureau of Mines.

Q. You do get figures, however, from Mr. Mallory that would enable you to form a judgment on that question?

A. I get them from the Bureau of Mines every month which enables me just as well, if not better, than Mr. Mallory's.

Q. In other words, there is a complete duplication between the figures of the Bureau of Mines and Mr.
10580 Mallory's figures?

A. In his list, Mr. Mallory's list, there may be one or two mills the figures of which are not included. When I get the Bureau of Mines, I get them all.

Q. Have you been interested in keeping your production and shipment just in line with the proportion that they bore to it, or have you tried to increase your percentage to the total?

Mr. Leisure: Just a moment. It seems to me we are not interested in what this witness may be interested in. The facts as to what his company does may be material but as to his interest, those are not facts that have any probative value, and I object to it.

Trial Examiner Norwood: I think he may tell us whether it enters into his policy or—

A. Ever since I have been in the business I have watched the figures of the Bureau of Mines very closely and if I got less than what I thought I should have, I have gotten after the sales department very strongly to see that they got more.

By Mr. Wooden:

Q. Have you been able to increase your proportion of the total?

A. Well, now, what do you mean, Mr. Wooden? Do you mean at one of the mills I was with years ago,
10581 or at the present time?

Q. No, I am talking about Hercules now.

A. I think we are getting quite a little more than Mr. Kind was getting when I went there.

Q. I meant in proportion to the total.

A. Yes, that is what I mean. I think our proportion is better than when I went there.

Q. Larger percentage of the total for the industry in your locality?

A. Yes, sir; I think the percentage we are getting today of the total business in this district is larger than the percentage Mr. Kind had been getting when I went there.

Q. Is that due largely to the Vulcanite arrangement?

A. No, that has nothing to do with Vulcanite. I am speaking only of shipments to Hercules' customers.

Q. Has the Hercules Company ever participated in any arrangement by which the amount of available business was shared with its competitors?

A. No, sir.

Q. Do you say that—

A. That is, to my knowledge; I can only go back to 1933.

Q. Do you say that any proposals of that sort that were initiated during the N.R.A. code period never developed into any actual arrangement?

A. The code provided for a distribution or allo-
10582 cation of business. That matter was gone into at the time the code was in effect quite fully.

Q. Do you say that nothing ever came of it?

A. No, sir; nothing ever came of it.

Q. Showing you, Mr. Brobston, papers marked Commission's Exhibits 808-MM, 808-NN, 808-OO, and 808-PP, for identification. Do you recognize the signature on 808-MM as yours (handing document to the witness)?

A. Oh, yes, that is a letter that I wrote.

Q. And the other papers attached to it; is that the copy of the memorandum that is referred to in your letter?

A. I should say it was.

Mr. Wooden: Your Honor, I shall not offer this at this time, and possibly not at all. I just wanted the identification.

By Mr. Wooden:

Q. Has the Hercules Company maintained a membership in the Cement Institute?

A. Yes, sir.

Q. And is still a member?

A. Yes, we are still members.

Q. Has any representative of your company, during your connection with it, been an official of the Institute?

A. Not since I have been connected with the company.

Q. Or has it been active or any of its repre-
10583 sentatives active in Institute work, committee work, or otherwise?

A. I have not, no; not in the Institute work.

Q. Any of your staff?

A. No.

Cross-Examination by Mr. Leisure.

Q. Mr. Brobston, Mr. Wooden asked you about the method of pricing followed by the Dexter Company around 1900. He wanted to know if it sold at an f.o.b. mill price to its agent; do you recall? Do you remember that line of questions?

A. Yes.

Q. I am just directing your attention to a line of testimony.

A. We sold to a sales agent.

Q. Did the Dexter Company sell all of its cement to one sales agent at that time?

A. Yes.

Q. And at that time the Dexter Company had only one customer; namely, this sales agent?

A. Well, we may have sold a few barrels to local farmers but the sales agent was responsible for the disposal of our entire product.

Q. And had just the one sales agent?

10584 A. Yes, sir.

Q. And as a consequence, would you say that this method of sale is or is not comparable to the method you followed later when you had many customers?

A. It is not comparable in any way.

Q. Mr. Wooden asked you if any company you were connected with ever sold f.o.b. mill as a general practice. Did you write a letter to the Procurement Division last April explaining the position of the Hercules Company on the f.o.b. mill prices?

A. I wrote a letter to the Procurement Division.

10585 Q. Mr. Brobston, I show you Respondents' Exhibit No. 46, for identification. I will ask you whether or not that is a copy of the letter that you wrote at that time?

A. Yes, sir.

10589 (RESP. EX. 46 was offered and received in evidence.)

Q. Now, Mr. Brobston, in this letter, the latter part of it—

10590 Q. You state that you feel "that we are not in a position to bid on the proposals as submitted." And you say that "we respectfully request that future proposals be in form that will not discriminate against the single unit mill."

Will you explain to the Examiner what you meant by that statement?

A. As I recall this particular request for a bid, it didn't specify any amount that we would be given; it didn't specify where the deliveries were—

10593 Trial Examiner Norwood: Go ahead. Finish
10594 your answer.

A. And we didn't know whether it would be within a territory where the Government would give us any business, or whether it wouldn't. If we had bid on it and been awarded some, we would have had to put the cement under test without ever knowing whether it would have been taken or not.

I did listen to Admiral Peoples the other day, and he said that a large company would be able to do that, but our company is limited in storage capacity, and we didn't feel that we could do it.

By Mr. Leisure:

Q. Is that one of the things you had in mind when you mentioned the single unit mill?

A. Oh, that was the main thing that I had in mind.

Q. Now, in preparing this letter, did you consult any other members of the cement industry in any way in coming to this conclusion?

A. No, sir.

Q. Now, Mr. Wooden also asked you, Mr. Brobston, if it was not the practice of the Hercules Company to have its salesmen quote destination prices on the basis of certain base prices plus freight. Do you remember that?

A. Yes, I remember, generally.

Q. I think your answer was in the affirmative.

10595 A. Whether our—

Q. You said yes, did you not?

A. Whether our salesmen quoted base prices plus the freight rate to destination, yes, my answer was yes.

Q. And why are Hercules' prices figured in this way?

A. So as we can compete with the other companies who are quoting in the same market.

Q. And where do you get these so-called base prices that you mentioned?

A. They are a matter of general knowledge. We can always find what the price is at any particular point, and by taking the freight rate, we can figure it back to what the price is.

Q. Have you ever had any agreement or understanding with your creditors that you would figure prices in any particular way?

A. No, sir.

Q. Now, as to the salesmen, to what extent is it necessary for the Hercules salesmen to figure destination prices? Is this necessary on every sale or only upon occasion?

A. Practically on every sale. He travels from town to town, and he has to know what the delivered price is in that town in order to compete.

Q. On every sale, I said. If he knows the price from previous sales, does he have to figure it each time?

10596 A. Not if he knows what the price is in the city in which he goes. If he knows the price, he don't have to do any figuring.

Q. So what is the practice, then? In the effort of the salesman to meet competition or is it an effort to figure the price on each and every sale?

A. Why, the thing he is interested in is meeting competition. He has to meet competition or he can't make the sale.

10601 By Mr. Zimmerman:

Q. No, I am not asking you for the reasons; I am asking you whether or not the delivered cost or delivered price is an essential to be known by the dealer or contractor who is buying from you in order that he may compete with other dealers or contractors in your location.

10602 A. My understanding would be that the dealer, himself, would have to know what the price would

be in that town and I would have to sell him at the price he knew he would have to get to compete with other dealers. That is about the only way I can answer it.

10605 *Redirect Examination by Mr. Wooden.*

Q. Mr. Brobston, you said, I believe, that you made your delivered prices the equivalent of the delivered prices of other concerns at given destinations—

A. Yes, sir.

Q. —in order to meet their competition?

A. Yes, sir.

Q. Did you ever make your delivered prices any lower at given destinations than your competitors did?

A. I wouldn't say that we never have done it, but, of course, my theory ever since I have been in the cement industry was to make the best cement possible to make
10606 that I ought to be able to get as much for it as anybody else. I can't get any more and I have to take the best I can get.

Q. In other words, if you did, at any time, make the delivered price less than that of your competitors, would you say it was intention or an accident or what?

A. No, I wouldn't say intentionally I would cut the prices at any time. The point is this: I believe in the one-price policy and in the old days we would guarantee to our dealers that the price to them was just as good as the price we were making to anybody.

Q. But you didn't undertake to offer them a lower delivered price?

A. No, sir; we didn't believe in secret rebates.

Q. Would it have to be done secretly?

A. Yes; if it were not done secretly another company would meet it and we would get no benefit from it.

Q. At the same time, you would be meeting their price or they would be meeting yours you would have the same delivered price at a lower mill net rate; is that the idea?

A. I wouldn't have any more chance of getting it in the lower price than the upper, because if I would cut the price the others would cut the price.

Q. Unless, possibly, market prices would have some effect upon demand or consumption. Would that be taken into consideration?

10607 A. Well, I have never known the time when there was enough cutting of prices, but that it would mean the whole market going down, in the whole time I have been in the cement business.

Q. Do you think that making the same delivered prices at the same destinations is something that should be done without regard to the relative costs of the different mills?

Mr. Zimmerman: It occurs to me the witness has said he knows nothing at all about selling in the cement business.

The Witness: No, I didn't say that at all.

Mr. Zimmerman: And hence this line of examination would be utterly futile.

Trial Examiner Norwood: Most of you have asked him that and he seems to be remembering a little.

The Witness: I don't think I made the statement I didn't know anything about the sales angle, Your Honor.

Trial Examiner Norwood: Read Mr. Wooden's last question.

(Last question read.)

A. I figure it is my duty to my stockholders to get the highest going prices for the cement that I sell. I make the best cement it is possible to make, and there is a peculiarity of the American people if a thing is cheap they don't think it is as good. I have always maintained
10608 prices so that people would agree I was making a good product and my cement has always been as good as any others, and I don't think I would be doing my duty if I didn't try to get the highest possible sum I could get for it.

10615 Mr. Wooden: Your Honor, I have here in my hand a paper which was marked as Commission's Exhibit 838-H, for identification. It was one of the papers produced under the subpoena duces tecum last winter or spring. It consists of a photographic copy of an original letter addressed to Joseph S. Young, president of Lehigh, by Adam L. Beck, president of the Great Lakes Portland Cement Corporation, at Buffalo.

I am offering that paper at this time on the basis of the fact that it was produced here in open court, I think, by the Lehigh Company, or its attorneys, and submitted in response of the terms of the subpoena duces tecum.

I am offering it at this time without further identification.

(The paper referred to was handed to Mr. Leisure.)

Trial Examiner Norwood: Just why wasn't it offered with the others? Did we have any discussion about it?

Mr. Wooden: No, Your Honor. That has never been brought up. While the great majority of the letters
10616 were offered at the time, I did not mean to preclude ourselves from later offering such additional ones as might be material and relevant at the moment. There may be others scattered here and there that may be offered on the same basis.

Trial Examiner Norwood: Counsel have general objections to that entire line.

Mr. Leisure: Yes, we do, Your Honor, and for that reason I will not take up further time at this time except to point out to Your Honor that this is another one of those letters written during the code period, and I make no point of the fact that it has not been identified, Mr. Wooden. We make no objection as to the identification.

Mr. Wooden: I see.

Mr. Leisure: But it does contain much hearsay evidence. It speaks of a proposed plan of sharing business under the code, which was never put into effect and was, therefore, not material or relevant to any of the issues.

For the grounds heretofore stated, we object to the exhibit.

Shall I give it to Mr. Zimmerman?

Mr. Wooden: Sure.

(The paperwriting referred to was handed to Mr.
10617 Zimmerman.)

Trial Examiner Norwood: Have the other Counsel any objection?

Mr. Wooden: I don't believe Mr. Zimmerman is going to object.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Mr. Zimmerman: What about this paper of the 28th that is referred to?

Mr. Wooden: I don't know.

Mr. Zimmerman: I don't either. I don't think this is intelligible without it.

Mr. Wooden: Well, it might be possibly more intelligible if that paper was available. I don't know whether it is or not.

Mr. Zimmerman: You haven't got it?

Mr. Wooden: I don't know. It may be that we have, but it hasn't come to my attention. I think there is a very intelligible statement made in that letter independent of the other one.

Mr. Zimmerman: It just seems to be sort of one-half of the picture, that is all.

Mr. Wooden: Well, if you have the other half, I have no objection, no matter what it is.

Mr. Zimmerman: I haven't got it. I would have
10618 no means of getting it.

Trial Examiner Norwood: May I see the exhibit?

Mr. Leisure: Surely.

(The paper referred to was handed to the Examiner.)

Mr. Wooden: The primary purpose of the offer is in the second paragraph, but I don't mean that is the only purpose of the offer.

Mr. Zimmerman: Oh, you mean where you talk about Marquette driving off the business?

Trial Examiner Norwood: This is off the record until I read the paper.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Wooden: I will be glad to ascertain whether we have the letter referred to.

(COM. EX. 838-H was offered and received in evidence.)

10651 Mr. Zimmerman: I don't know of any practice of an exception here. As far as I understand it, we don't have any benefit of an exception.

Mr. Wooden: Oh, yes, you do, to all adverse rulings.

Mr. Zimmerman: We don't preserve any; it isn't necessary nor customary, as I understand it. As I wrong about that? Is there such a rule?

Trial Examiner Norwood: You have your exceptions on that. I think we have agreed that you are understood to have an exception to every adverse ruling.

10675 Washington, D. C.,
November 10, 1938.

10688 TRAVIS BROWN was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Brown, I believe your previous testimony showed your one time employment by the Federal Trade Commission and the general nature of your duties and the fact that you have engaged in an investigation of the cement industry.

A. Yes.

Q. In the course of that investigation did you call upon the Hercules Cement Corporation?

A. I did.

Q. Whom did you deal with there?

A. I talked to one of the officers of the company. I don't recall his name—

Q. Do you remember a Mr. Brobston?

10689 A. Yes, it was Mr. Brobston.

Mr. Leisure: Will you fix the date?

By Mr. Wooden:

Q. Can you say about when it was, Mr. Brown?

A. As I recall it was approximately two years ago; some where about that time.

Q. Did you have access to some of the files of the company with Mr. Brobston's permission?

A. Yes, Mr. Brobston made them available.

Q. Did you obtain from him copies of material that you selected?

A. I did.

Q. I am showing you papers marked Commission's Exhibits 1431, 1432, 1433, 1434, 1435, 1436, and 1437-A, B, and C; can you state what they are (handing documents to the witness)?

A. Yes, these are copies of information which I extracted from the file of the Hercules Cement Company and which Mr. Brobston furnished to me.

10690 Mr. Wooden: They are already in evidence, Your Honor, but in view of Mr. Brobston's testimony, that he imagines these to be the ones, why, we are taking occasion to follow it up a little further.

Q. Mr. Brown, I am showing you Commission's Exhibits 1438, 1438-A to G, inclusive, and I will ask you to state what they are?

A. These are copies of various papers, documents taken from the files of the Hercules Cement Company as supplied by Mr. Brobston.

Q. Now, showing you papers, Commission's Exhibits 1439, 1439-A, which is apparently another case of the same sort of number, 1440, 1440-A, 1441 and 1441-A; what are those papers? And add to that 1441-B.

A. These are copies of various papers taken from the files of the Hercules Cement Company supplied me by Mr. Brobston.

Q. I now show you papers consisting of Commission's Exhibits 1442, 1442-A, 1442-B, and 1443. What are those papers?

A. These also are copies of papers taken from the files of the Hercules Cement Company supplied me by Mr. Brobston.

10691 Q. Is there any marking on all these papers which enables you to identify them,—any marking of your own?

A. Yes, there is. There is an exhibit number and a notation of the person with whom the interview was held, and the date, and my own signature to each of these copies.

Q. Is that placed on there as of the time you obtained the papers?

A. Yes, it was.

Mr. Wooden: Your Honor, to make the record perfectly clear, in view of the numbering that was followed in these papers, I think I ought to offer Commission's Exhibits 1438, 1439, 1440, 1441, and 1442. That is to take care of the papers which were numbered in that way, and while there were other papers that carried the letter designations to the same number, we only offer these at this time.

10692 (COM. EXS. 1438, 1439, 1440, 1441, and 1442, were offered and received in evidence.)

10797 Cleveland, Ohio,
November 15, 1938

10800 FREDERICK PICKFORD, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre

10801 I am secretary of Medusa Portland Cement Company and have held that position for approximately 2 years. Previous to that I was assistant secretary to the same company for 24 years. I was an official of that company for probably 6 years prior to becoming secretary, that is for the past 8 years.

Q. You received from the Federal Trade Commission a subpoena duces tecum for the production of certain papers here today, did you?

A. Yesterday.

10802 Q. Have you produced the papers that were called for?

A. All that is possible to produce in a short time.

Q. Do you mean you had insufficient time between the date of the receipt of the subpoena and today to produce the papers called for?

A. Yes, sir.

Q. When did you receive the subpoena?

A. About noon yesterday.

Q. About how much time in your estimation would be required to produce the papers called for under the subpoena?

A. Well, that is pretty hard to say. At least, a week, probably more.

Q. What papers do you have here this morning in response to the subpoena?

A. Well, I have the letters that are specifically mentioned in the subpoena, and also all of the files of our Mr. McFarland.

Q. Do you have any files that relate to your Mr. George W. Cole, Traffic Manager?

A. We are going through those now. I haven't those here. They are pretty voluminous.

Mr. MacIntyre: I ask, Your Honor, that the documents

which have been produced be marked for identification at this time.

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood:

10803 The following papers were reduced by Mr. Pickford pursuant to a subpoena duces tecum served on the Medusa Company and were marked for identification: Com. Ex. 1453 A and B: a letter to Mr. Eugene Morris, chairman, dated April 12, 1932 purporting to be signed by G. W. Cole, together with a list of copies attached; Com. Ex. 1454: a letter to Mr. Eugene Morris, chairman, date April 15, 1932, purporting to be signed by G. W. Cole, together with a list of copies attached. Com.

10804 Ex. 1455: a copy of a letter dated July 25, 1931 purporting to be from D. H. McFarland to W. W. Campbell; Com. Ex. 1456: a copy of a letter dated July 29, 1931 to W. W. Campbell, called for by paragraph 4 of the subpoena; Com. Ex. 1457: what appears to be a letter from E. H. Humas to Mr. D. H. McFarland from Ohio Builders Supply Association, apparently signed by E. C. Kinney, dated December 11, 1931; Com. Ex. 1458:

10805 letters produced under the last paragraph of the subpoena; December 9, 1931, Edward C. Kinney; Com. Ex. 1459; A carbon copy of a letter on the letterhead of the National Builders Supply Association, dated September 28, 1931; Com. Ex. 1460: carbon copy of a letter, dated September 5, 1931, to C. H. Boynton; Com. Ex. 1461: carbon copy of a letter dated September 5,

10806 1931 to W. W. Campbell, president; Com. Ex. 1462: letter dated August 30, 1931 to D. H. McFarland apparently signed by W. W. Campbell; Com. Ex. 1463: letter dated August 23, 1931 in longhand on the letterhead of the Green Pastures, Stamford, Conn.; Com. Ex. 1464: carbon copy of letter dated August 19, 1931

10807 to C. H. Boynton; Com. Ex. 1465: carbon copy of letter dated August 19, 1931 to W. W. Campbell; Com. Ex. 1466: carbon copy of letter dated August 5, 1931 to C. H. Boynton; Com. Ex. 1467: letter dated August 4, 1931 to Mr. David H. McFarland, apparently from C. H. Boynton; Com. Ex. 1468: letter dated July 29, 1931 from W. W. Campbell to D. H. McFarland; Com. Ex.

10808 1469: letter on the stationery of C. H. Boynton, dated July 24, 1931; Com. Ex. 1470: letter dated

July 18, 1931 from W. W. Campbell to "D. H. Mc-
10809 Farland"; Com. Ex. 1471: carbon copy of letter to W. W. Campbell dated July 14, 1931; Com. Ex. 1472: "letter to D. H. McFarland to W. W. Campbell dated July 9, 1931". The witness did not arrange these in the order of their dates. That is just the way they were handed to him.

10810 The following papers, produced pursuant to a subpoena duces tecum were marked for identification: Com. Ex. 1473: copy of a telegram containing the date in the body thereof of July 22, purporting to be signed by W. W. Campbell; Com. Ex. 1474: sheet containing copies of telegrams; Com. Ex. 1475: telegram purporting to be signed by W. W. Campbell; Com. Ex. 1476: carbon copy of letter to W. W. Campbell from C. J. Brister; Com. Ex. 1477: carbon copy of letter to Mr. W. W. Campbell dated July 6, 1931; Com. Ex. 1478: "Let-
10811 ter to D. H. McFarland of Youngstown Ice Company, on the stationery of the Youngstown Ice Company, dated July 3, 1931'"; Com. Ex. 1479; letter from W. W. Campbell to D. H. "McFarland" dated July 2, 1931; Com. Ex. 1480: carbon copy of letter to E. J. Holway, dated July 2, 1931; Com. Ex. 1481: carbon copy of letter, dated June 17, 1931, to W. W. Campbell from J. L. Eysmans; Com. Ex. 1482: carbon copy of letter dated June 20, 1931 to F. J. Crowley from W. W.
10812 Campbell; Com. Ex. 1483: copy of letter, dated June 26, 1931, to W. W. Campbell from J. J. Bernet; Com. Ex. 1484: copy of letter, dated June 27, 1931, to W. W. Campbell from C. E. Denny; Com. Ex. 1485: carbon copy of letter, dated June 23, 1931, to W. W. Campbell from Daniel Willard; Com. Ex. 1486 A and B: copy of letter dated July 1, 1931 to Daniel Willard from W. W. Campbell; Com. Ex. 1487: carbon copy of telegram, dated July 2, 1931, to W. W. Campbell from C. E.
10813 Denny; Com. Ex. 1488: carbon copy of letter to W. W. Campbell, dated June 19, 1931; Com. Ex. 1489: copy of letter to D. H. "McFarland" from W. W. Campbell, dated June 12, 1931.

10814 Q. Mr. Pickford, I now show you a document which has been marked for identification as Commission's Exhibit 1453-A, and a document marked as Commission's Exhibit 1453-B, and I ask you to state whether or not that facsimile signiture appearing on the

exhibit is, to your knowledge, that of Mr. George W. Cole, traffic manager of the Medusa Portland Cement Company?

A. It appears to be.

Q. You are acquainted with his signature, are you?

A. Yes.

Q. And that appears to be his?

A. It appears to be his.

Q. I now show you documents which have been marked, for identification, as Commission's Exhibits 1454-A, B, and C. I ask you to state whether or not the facsimile signature appearing on 1454-B is that of Mr. Cole, to your knowledge and belief?

A. Yes, that also appears to be it.

Q. In that connection, I would like to ask you how long your knowledge has gone that Mr. G. W. Cole has served as general traffic manager of the Medusa Portland Cement Company?

A. Oh, probably 15 to 18 years.

Q. That is, regularly in that position, and he still holds it?

10815 A. Yes. That is just a guess on my part, but I think it is pretty close to right.

Com. Ex. 1455: is a letter produced in response to the requirement in the 3rd paragraph of the subpoena duces tecum; Com. Ex. 1456: is a letter produced in response to the requirement in the 4th paragraph of the subpoena duces tecum; Com. Ex. 1457: is a letter produced in response to the requirement in the 5th paragraph of the subpoena duces tecum; Com. Exs. 1458 to 1489 in-
10816 clusive are letters produced in partial response to the requirement in the 6th paragraph of the subpoena duces tecum. "Those" are the ones that he brought in this morning in response to that particular paragraph.

Now, showing you Commission's Exhibit 1458, for identification, I ask you to state who Mr. D. H. McFarland referred to therein happens to be? Do you know him?

A. Mr. McFarland?

Q. Yes.

A. Vice-president.

Q. Of what?

A. Of Medusa Portland Cement Company.

Q. Of Medusa Portland Cement Company?

A. Yes, sir.

Q. What about Mr. E. C. Kinney?
A. I don't know who he is.
Q. You have never heard of him before?
A. No.
Q. Showing you a document marked as Commission's Exhibit 1460, for identification, I ask you to state if
10817 you know who Mr. C. H. Boynton, referred to therein, happens to be?
A. No, sir; I don't.
Q. Never heard of him?
A. Never heard of him.
Q. Showing you Commission's Exhibit 1461, for identification, I ask you to state whether or not if you know who the Mr. W. W. Campbell referred to therein happens to be?
A. No, sir; I do not.
Q. Never heard of him?
A. Only in connection with this correspondence here.
Q. Well, in what manner was that?
A. Not previous to the present moment.
Q. You have never heard of him before this moment?
A. No, sir.
Q. Showing you a document marked for identification as Commission's Exhibit 1473, I ask you to state whether or not you know the Mr. C. E. Denny referred to therein?
A. I have heard of him, but I don't know him.
Q. As whom?
A. Well, as a railroad man; that is as near as I can tell you.
Q. What about Mr. C. J. Brister referred to therein?
A. Never heard of him.
Q. Never heard of him?
Mr. Julien Eysmans?
10818 A. No, sir.
Q. Never heard of him?
A. No, sir.
Q. Mr. Golder Schumace?
A. No, sir; I never heard of him.
Q. And Mr. D. H. McFarland, who is also referred to in the same document?
A. Vice-president.
Q. Or the Medusa Portland Cement Company?
A. Yes, sir.
Q. I show you a document, marked for identification as

Commission's Exhibit 1478, and ask you to state whether or not you know the Mr. Ed Holway purporting to have signed that letter?

A. I do not know him personally. I heard of him.

Q. Heard of him as whom?

A. In connection with this Youngstown Ice Company.

10819 Q. I ask you if you have heard of Mr. Holway as an official of the Ohio Builders Supply Association?

A. I can't say that I have ever heard of him in that connection.

Q. What about as official of the National Builders Supply Association?

Mr. Leisure: I make the same objection.

Trial Examiner Norwood: Objection overruled.

10820 Counsel may have—

The Witness: I can't say that I have ever heard of that, either.

Trial Examiner Norwood: Counsel may have the same objection to like questions.

By Mr. MacIntyre:

Q. I show you now a document marked, for identification, as Commission's Exhibit 1482, and ask you to state whether or not you know the Mr. F. J. Crowley mentioned therein?

A. I do not know him; no, sir.

Q. Have you ever heard of him in any connection with these papers, or otherwise?

Mr. Leisure: May I make the same objection?

A. No, sir.

Trial Examiner Norwood: Counsel may have his objections right along to that question.

By Mr. MacIntyre:

Q. I now show you a document—

Trial Examiner Norwood: Objection overruled.

Q. —marked, for identification, as Commission's Exhibit 1483, and ask you to state whether or not you know the Mr. J. J. Bernet, who is referred to therein?

A. I have heard of him.

Q. As whom?

A. As a railroad man.

10821 Q. I now show you a document, marked for identification as Commission's Exhibit 1484, and ask you

to state whether or not you have heard or know the Mr. C. E. Denny referred to therein?

A. I do not know him personally. I have heard of him.

Q. As whom?

A. As a railroad man.

Q. I now show you a document marked for identification as Commission's Exhibit 1485, and ask you to state whether or not you know the Mr. D. Willard referred to therein?

A. I don't recall having heard of him.

Q. You don't know him?

A. No, sir.

Q. Neither have you ever heard of him?

A. I don't recall him; no, sir.

Q. You never heard of Mr. Daniel Willard, president of the Baltimore & Ohio Railway system?

A. Well, I probably have, but not personally.

Q. I now show you a document marked, for identification, as Commission's Exhibit 1487, and ask you to state whether or not you know the Mr. T. E. Denny referred to therein?

A. I do not know him personally; no, sir.

Q. Have you ever heard of him?

A. The name is familiar.

10824 Q. I will ask you now, Mr. Pickford, whether or not the documents to which we have just referred, that is, those marked for identification as Commission's Exhibit 1458 to 1489, inclusive, were those that you found in Mr. McFarland's office at the time that you attempted to comply with this subpoena?

A. Yes, these came from Mr. McFarland's files.

10825 A. The only knowledge I have of these papers is that they were produced from Mr. McFarland's files and given to me in answer to that subpoena.

By Mr. MacIntyre:

Q. By whom were they produced from Mr. McFarland's files to you?

A. By Mr. McFarland's office.

Q. Mr. Pickford, as secretary of the Medusa Portland Cement Company, can you state whether or not it is the custom of that company and the practice of that company to retain carbon copies of correspondence such as this purports to be?

A. It is the practice.

10830 E. J. PFEIFFER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

10831 *Direct Examination by Mr. MacIntyre.*

I am chief clerk for the Western Union Telegraph Company, Cleveland, Ohio, and have held that position for about ten years.

Q. Were you subpoenaed to bring certain papers and produce them here this morning?

A. Yes, sir.

Q. Did you produce them?

A. No, sir.

Q. Why not?

A. The files for 1932 have been destroyed in accordance with the rulings of the Federal Communications Commission, which required that they only be retained one year.

10832 H. L. BAIRD, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

10835 *Direct Examination by Mr. MacIntyre.*

I am assistant to the vice-president in charge of traffic for the New York, Chicago & St. Louis Railroad Company, commonly and popularly known as the Nickel Plate. My office is located at 804 Terminal Tower, Cleveland. The vice-president to whom I am assistant
10836 is Mr. J. H. Day. I have held my present position since July, 1935. Previous to that I was general freight agent for the same railroad for 4 years from April 16, 1931. During the period of that employment I had to do with the correspondence that came in or went out from the office of J. H. Day, the vice-president of traffic and a considerable quantity of it cleared over my desk.

The witness identified Com. Ex. 1043 LL: as a memorandum written in Mr. Day's office. He can identify
10837 it from the file number and the signature. He turned "that" over to a representative of the Federal Trade Commission; Com. Ex. 1043 AAA: as a letter

which was sent out by the former Chairman, Collyer, of the Traffic Executive Association, Eastern Territory, of the Railroad, and he can identify it as having been received in the Nickel Plate offices. The stamp in the upper left hand corner happens to be "our" office receipt stamp. The note in handwritten pencil is in the personal handwriting
of Mr. J. H. Day, Vice president in charge of traffic
10838 for the Nickel Plate; Com. Ex. 1043 QQQ: as a document which has been taken from "our" files, and he recognizes it as an excerpt from proceedings of certain meetings of the Traffic Executive Association held on September 17, 1931; Com. Ex. 1043 SSS: as a document that was taken from "our" file; it is a letter sent out by Chairman Morris of the Central Traffic Executive Committee, addressed to the member railroads on the subject of trucking rates on building materials. It carries the witness' receipt stamp in the upper left corner. That is "our" file number in the upper right corner; Com. Ex. 1043 TTT: as an excerpt from proceedings "of a minute" of the Central Traffic Executive Committee held September 30,
10839 1931, on the subject of trucking rates on building materials. It is a document from the files of the Nickel Plate road, which he also furnished to a representative of the Federal Trade Commission; Com. Ex. 1043 KKKK: as a typewritten letter written in Mr. Day's office, vice president of traffic of the Nickel Plate road, addressed to Mr. R. A. Williamson, formerly "our" assistant field traffic manager working under Mr. Day. The witness is not exactly certain as to the title that Williamson held at the time of the date of this letter, December 17, 1931, but he was either general field agent or assistant traffic manager at that time. In any event, he [Williamson] was in the traffic department of the Nickel Plate road.
10840 His initials are R. A. W. The witness recognizes very clearly Mr. Williamson's handwriting in the lower right corner and in the upper right corner;
10841 Com. Ex. 1043 4Q: as a typewritten confirmation of a telegram which was sent by Mr. R. N. Collyer, Chairman of the Traffic Executive Association, Eastern Territory, to Members of the Association on the matter of the trucking situation. Mr. J. H. Day of the witness' company was included as one of the addressees. It bears "our" office dated receipt stamp. He must identify the handwriting in pencil in the lower left hand corner as Mr.

Williamson's handwriting, Mr. R. A. Williamson of the witness' company. He identifies the handwriting in the lower right hand corner as the handwriting of the
10842 man who was chief clerk to Mr. Williamson at that time, (whose) name is K. S. Boreman; the witness identfied Com. Ex. 1043 4R as a Western Union Telegram which was received in Mr. J. H. Day's office, and bears "our" regular date stamp. The telegram was marked over by the man who was then assistant to Mr. Day, Mr. L. Gallagher. He endorsed it over to Mr. R. A. Williamson. The initials "R.A.W.", being the initials of Mr. Williamson, appear in Mr. Gallagher's handwriting; the witness identified Com. Ex. 1043 4V: as a carbon copy of a
10843 letter written by Mr. Williamson of his company. It bears Mr. Williamson's personal stamp covering his name and it also bears Mr. Williamson's personal file number which was used at that time in connection with the matter discussed in the communication; the witness identified Com. Ex. 1144: as a letter written by Mr. J. H. Day to Chairman Collyer, Trunk Line Association, New York City. That is Mr. Day's personal signature.

Mr. MacIntyre: That is all, Mr. Baird.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. Leisure.

Q. May I look at those just a moment, Mr. Baird?

A. Yes, sir.

10844 (Mr. Leisure examines a bound volume of paper writings.)

By Mr. Leisure:

Q. Mr. Baird, on this 1043-3A, will you say that you recognize that as having come from Mr. Collyer? You don't want us to understand that you were present when it was mimeographed and sent out by Mr. Collyer, do you?

A. No, sir.

Q. Were you personally present and received it from Mr. Collyer?

A. No, sir.

Q. What you mean when you say you recognize it is that you recognize the typewritten signature as being that of Mr. Collyer; is that correct?

A. That is correct.

Q. Yes. And I think you said also that you recognized your own stamp at the top of it?

A. Our office dating stamp, yes, with which we stamp all inbound mail.

Q. But you did not want to testify that you either were personally present when it was sent or personally present when it was received?

A. No. I did not intend to do that.

Q. Nor did you have anything to do with making up the contents of the documents?

A. Nothing whatsoever.

10845 Q. You have given us, in other words, all you know about the letter?

A. I think so.

10850 *Redirect Examination by Mr. MacIntyre.*

Q. Mr. Baird, just a moment, please.

When you answered Mr. Leisure and stated that you were not personally present when these letters were received, did you mean to state that you were not in the office of the Nickelplate Railway and had anything to do with the receiving or the supervision over the stamping of letters as being received in the office of the Nickel-

10851 plate Railroad in accordance with the system then in vogue of stamping received mail or inbound mail?

A. I did not mean to leave that impression with my answer. I merely meant that, to my knowledge, I could not say that I was right in the office the moment that letter reached the office.

Q. But you don't mean to change your testimony that you gave on direct examination to the effect that you were in the office in which these letters were received of the Nickelplate railroad?

A. No, sir.

Q. Now, as to this Exhibit 1043-TTT, that was a letter, or that is a document that was furnished by you to a representative of the Federal Trade Commission from the files of the Nickelplate road, was it?

A. Yes, sir.

Q. You are positive of that?

A. Absolutely certain.

Q. And are you also positive of that fact with respect to the other letters that you have identified here this morn-

ing with the exception of that one marked as Commission's Exhibit 1144?

10852 A. Well, I kind of lost track of what preceded that, now.

By Mr. MacIntyre:

Q. That is, as to whether or not the other documents, other than Commission's Exhibit 1144, were documents, —that is, those identified other than Commission's Exhibit 1144, were documents that you furnished to a representative of the Federal Trade Commission, from the files of the Nickelplate road?

A. Yes.

10853 H. N. HANSEN, called as a witness on behalf of
10854 the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am president of the Toledo Plaster & Supply Company and have been in that position since 1930. During the period that I have been so occupied I also have been an official of trade associations in which I personally or that firm had a membership, namely, Ohio Builders' Supply Association and the National Builders' Supply Association. I was an officer in the Ohio Builders' Supply. I held the office of vice-president at one time and later
10855 president. I was president, I think from 1930 through 1931.

Q. Mr. Hansen, you were directed under subpoena to produce certain documents here this morning. Have you produced those documents?

A. No, I was unable to locate them.

Q. Did you produce any other documents?

A. These two here (witness shows two papers to Counsel).

The witness identified Com. Ex. 1490 as a letter
10856 which he received from Mr. Corrou. He signs it as secretary of the New York State Builders' Supply. The witness did not know him as secretary of the New York State Builders' Supply at that time. He does not recall ever knowing him personally at all, but he received the

letter in due course of mail; Com. Ex. 1491 as an answer which the witness sent to Mr. Corrou, answering his letter of August 26th, Com. Ex. 1490.

Q. Mr. Hansen, I now show you a document marked as Commission's Exhibit 1043-PP, and ask you to state whether or not, to your knowledge and belief, that that is the document referred to, or is the photostat of a
10857 document referred to in a letter which has been marked for identification as Commission's Exhibit 1490 (showing paper to witness)?

A. Yes, I believe it to be the answer.

Q. (Showing paper to witness) I now show you a document marked as Commission's Exhibit 1043-ZZZ, and ask you to state whether you recognize that, and, if so, as what?

A. I don't recall the letter—receiving the letter.

Q. Do you recognize the signature?

A. Yes, I would recognize that as Mr. Murray's signature.

Q. Mr. G. C. Murray?

A. Yes, Mr. G. C. Murray.

Q. You knew Mr. Murray, did you?

A. Yes.

Q. At the time that letter was written?

A. Yes.

Q. Who was he?

A. He was secretary of the National Builders' Supply Association.

Q. You received letters regularly from him?

A. Yes.

Q. Did you know his signature from the other letters and from seeing him write them—having written his signature to other letters?

A. Yes,—I don't recall offhand having seen him write it, but I have received a number of letters from
10858 him, and would recognize that signature.

Q. That would apply to the other letters you received from him?

A. Yes.

Q. And to which you made replies?

A. Yes.

10859 Mr. MacIntyre: I would just like to call the Examiner's attention to the subpoena that was directed to Mr. Hansen that it called for his file copy, of which

Commission's Exhibit 1043-PP is a photostat, and the original of a letter of which Commission's Exhibit 1043-ZZZ is a photostat in an effort to comply with the Commission's directions that we secure the best evidence of these particular documents, and Mr. Hansen's testimony, if I recall, was that he could not locate those letters.

Trial Examiner Norwood: Yes.

10860 W. F. DORSCH, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am chief clerk of the Wabash Railroad Company in the general agent's office at Cleveland, Ohio, and have held such position for about the last 12 years. As a result of my work in that position I am acquainted to a certain extent with the signatures appearing on letters
10861 in-coming and out-going from that office to other offices of the Wabash Railway. In that connection I am acquainted with the signature of John S. Wassman, formerly an agent of the Wabash Railway in Buffalo only to the extent that it has appeared on correspondence interchanged between the two offices. That is, I have noted the similarity on his signatures on the correspondence from his office to my office. I cannot say the same thing as to correspondence from Mr. L. M. Boss of the Wabash Railway in Decatur, Ill. We never did have very much correspondence interchanged between the two offices and as to his signature I could not give any outstanding identification or attempt to, but I have seen his signature at various times in the past on correspondence coming into my office from his.

The witness was shown Com. Ex. 1043 I and was asked whether he considered the signature on that letter
10862 appeared to be that of Mr. Boss. He replied that Mr. Boss had not been with his company for a considerable length of time and he would not care to state at this time definitely.

By Mr. MacIntyre:

Q. Well, is that signature similar to the signature of Mr. Boss that has appeared on letters that you received from his office in your office here?

Mr. Leisure: I object to that question. Whether it is similar or not is immaterial.

Trial Examiner Norwood: The objection is sustained.

The witness identified Com. Ex. 1043 K as a letter bearing the signature of J. C. O'Boyle, General Agent in charge of Wabash's office; Com. Ex. 1043 N as a
10863 letter bearing the signature of Mr. O'Boyle. He recognized it as Mr. O'Boyle's signature. The witness identified Com. Ex. 1043-F as a letter bearing a signature he recognized as having appeared on other correspondence interchanged between his office in Cleveland and that in Buffalo, New York. Mr. John J. Mossman, Assistant General Freight Agent, was in charge of that office and the correspondence between the two offices invariably bore Mr. John J. Mossman's signature.
10864 Witness believes that Mr. Mossman is now dead.

Cross Examination by Mr. Leisure.

Q. Mr. Dorsch, Mr. MacIntyre asked you if you recognized the signature on Exhibit 1043-F, which purports to be the signature of Mr. Mossman.

Have you ever been present when he signed his name?

A. No, sir.

Q. And you have never personally seen him sign his name?

A. No, sir.

Q. And can you say of your own knowledge whether or not that is his signature?

A. I won't say positively.

Q. Now, as to Exhibit 1043-K, Mr. Dorsch, this signature, have you ever been present when he signed his name?

A. Yes.

Q. And do you recognize the signature as Mr. O'Boyle's signature?

A. Yes, sir.

10865 Q. With reference to 1043-I, Mr. Dorsch, have you ever been personally present when Mr. L. F. Boss signed his name?

A. No, sir.

Q. Can you identify that as being his signature? Can you identify that of your own personal knowledge?

A. No, sir.

J. C. O'BOYLE, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

10866 *Direct Examination by Mr. MacIntyre.*

I am general agent of the freight department of the Wabash Railway, Cleveland, and have held that position since 1920.

The witness identified Com. Ex. 1043 F as a letter bearing the signature of John J. Mossman, as he knew it, but he was not an expert on handwriting. It was sim-
10867 ilar to the signatures on the other correspondence. The office received possibly 15 or 20 letters a year from Mr. Mossman over the past 20 years and the writing here was identical with most of the letters signed from the Buffalo office under the name of John J. Mossman.

Trial Examiner Norwood: The objection is overruled.

The witness is not very familiar with the signature of Mr. L. F. Boss. "We have very few letters from Mr. Boss." He has not been connected with "our" company for the past three years. The witness has seen
10868 other correspondence of Mr. Boss, but it has been quite some time, he would say at least four years. The witness would not be qualified to say that "that" was his signature on Com. Ex. 1043 i. The witness
10869 identified Com. Ex. 1043 K as a letter over his signature, written May 26, 1931, to Mr. G. G. Early, assistant freight manager of the Wabash Railroad Company at St. Louis, in reply to a letter received from him relative to securing information from various cement concerns; Com. Ex. 1043 J as a letter referred to in Com. Ex. 1043 K; Com. Ex. 1043 N as a letter, dictated and signed by himself under date of May 29, 1931, addressed to Mr. G. G. Early, who was freight traffic manager of the
10870 Wabash Railway Company at St. Louis, Mo., and supplements the preceding letter, and, "With this letter I am attaching a letter received from Mr. G. W. Cole, general traffic manager of the Medusa Portland Cement Company"; 1043 M as the document referred to in 1043 N, as being attached to "our" letter of May 29th.

Mr. MacIntyre: If Your Honor please, I would like to state for the record that when the Commission's Exhibits 1043-M and 1043-J were offered in evidence, during March, 1938, there were no objections raised on behalf of Counsel subject to check, and they were admitted in evidence.

10872 E. J. HOLWAY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am president of the Youngstown Ice Company at Youngstown, Ohio, and have held that position about 3 years. Previous to that I was secretary and sales manager of the same company for possibly 25 or 28 years.

The nature of the business of the company is build-
10873 ers' supplies and fuel. It handles Portland cement, which it purchases from manufacturers and resells to the consuming trade in and around Youngstown. In connection with my duties as secretary and treasurer and sales manager and later as president of the company I have, either as an individual or as a representative of the company, held membership in trade associations, namely the Ohio Builders' Supply Association, National Builders' Supply Association, and the National Federation of Builders' Supplies. I held membership in the Ohio Builders Supply Association from possibly 1903 until it dis-
10874 banded when the N. R. A. came in in 1933 or 1934. Whenever the N. R. A. came in it went out. I was an officer of that association a number of years ago—president, vice president and governor. I was vice president of the National Builders' Supply Association in 1932, I think. I think I was a director in 1931. I would
10875 not want to say that under oath. I would not recall what period of time I served as director in the National.

Q. Mr. Holway, you received a subpoena for the production of certain documents here this morning?

A. Yes, sir.

Q. Did you produce the documents?

A. No, sir.

Q. Why not?

A. I couldn't find—our files prior to 1932, or prior to 1933.

Q. They are not in your files?

A. We haven't got the files, Mr. MacIntyre.

Q. You haven't any files running back that far?

A. No, 1932, back beyond 1933, January, 1933.

Q. What became of the files?

A. I suppose they were destroyed, I don't know; our office manager takes care of that.

Q. You consider you are, therefore, unable to produce the documents called for?

A. I sure am; yes, sir.

10876 Trial Examiner Norwood: Do you wish this description on the subpoena duces tecum to go in the record?

The Witness: Yes.

Mr. MacIntyre: Yes, I would like for it to go in.

Trial Examiner Norwood: The letters called for by the subpoena duces tecum, addressed to the witness E. J. Holway, are described as follows:

"Original letter from R. H. Hilderbrand, State Secretary of the Indiana Builders Supply Association, South Bend, Ind., to E. J. Holway, Youngstown Ice Company, Youngstown, Ohio, dated September 11, 1931.

"Original letter from E. C. Kinney, Executive Secretary, Ohio Builders Supply Association, Columbus, Ohio, to E. J. Holway, Youngstown Ice Company, Youngstown, Ohio, dated October 12, 1931."

By Mr. MacIntyre:

The witness identified Com. Ex. 1043 G as a letter that he wrote to E. C. Kinney, the executive Secretary of
10877 the Ohio Builders' Supply Association, Columbus, Ohio; it is not his signature on Com. Ex. 1043 L. It is the signature of "our" stenographer. She signed it there for the witness with his authority; he wrote the letter and she signed it for him; her name is Anna Walters; the witness identified Com. Ex. 1043 OOO as evidently a letter written by R. H. Hildebrand; that is his signa-
10878 ture, which the witness recognizes; it is written to the witness; it is one of the documents that (the Federal Trade Commission) asked him to produce. It is a photostat as he could not find the original. He hunted, and the office manager and he could not even find the files for 1931 and 1932; Com. Ex. 1043 UUU as evidently a letter that the witness wrote to Kinney. He does not see any signature on it, but it has his stenographer's and his initials in "here." He does not remember the letter however. It is a photostat of a file copy; it has his ini-
10879 tials and the initials of his stenographer; the witness was shown a document marked as Com. Ex. 1043

VVV, and asked to state whether or not he recognizes that, and, if so, as what. The witness said: "Is there any
10880 reply to this one?" (Witness refers to papers.) He does not know (whether) his subpoena called for the original of which "that" is a photostat and a file copy. He recognizes the letter but he does not remember receiving it, naturally; Com. Ex. 1346 A and B as a letter written to Mr. Eysmans by him and signed by his
10881 stenographer. He presumes that Com. Ex. 1346 B is the resolution referred to in Com. Ex. 1346 A. However he does not have a recollection of it at this time, but he definitely recognizes and identifies the letter; Com. Ex. 1347 as a letter written by the witness to Mr. Eysmans on November 25th, bearing the witness' signature; Com. Ex. 1348 A and B as a letter written by him on November 23rd, marked "personal and confidential" to Mr. Eysmans, and signed by the witness.

10882 *Cross-Examination by Mr. Leisure.*

The witness has never been personally present when Mr. R. H. "Hilderbrand" signed his name. As he recollects it, "that" is his signature, on Com. Ex. 1043 OOO because the witness has seen him write it several times, and he knows that it is his signature. He recoginzes Com. Ex. 1043 VVV, as a photostat of a typewritten letter unsigned, bearing a typewritten signature "Ohio Builders' Supply Association," as being written to him. It says on its face that it was written to him. He would not say that he recalls having received it.

10883 *Redirect Examination by Mr. MacIntyre.*

The witness recognizes Com. Ex. 1043 VVV as a letter addressed to him, and from his previous correspondence, he would recognize this answer as relating to matters that the witness had correspondence with him about on that date, or thereabouts. The date is so far distant that he can't remember details regarding it. He recognizes the letter as the letter written by Mr. Kinney to him. His initial is down here (indicating) and his signature—he knows his signature, and it is addressed to the witness.

10885 W. T. STARR, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am the secretary of the Cambridge Lumber and Coal Company at Cambridge, Ohio, and have held that position since 1920. As an individual, or as a representative of that company, I have had memberships in trade associations. We were members of the Builders Supply, the State Builders and the National Builders Supply Asso-
10886 ciation. That is, the Ohio Builders' Supply Association and the National Builders' Supply. I think we were members about 3 years, around 1930, 1931 and 1932, and we were also members of the National Builders' Supply Association during the same period. I was never an officer in either of those associations, merely a
10887 representative of my firm in its membership. I was never a director in either of the 2 associations or a governor in the Ohio Builders' Supply Association. My concern is not now a member of the Ohio Association and so far as I know I do not think the Ohio Association is in existence today. I do not think we have had any information since 1932. I do not know whether or not the National Builders' Supply Association is still functioning.

Q. Did you, during 1931, while your concern was a member of the Ohio Builders' Supply Association, have any correspondence with Mr. E. C. Kinney, the executive secretary of the Ohio Builders' Supply Association?

A. Yes, sir; I think we had several letters about the trucking situation at that time.

10888 Q. That is, during 1931?

A. Yes.

Q. Do you have a subpoena that directed you to produce today any correspondence that you had with Mr. Kinney on that subject?

A. Yes, I have.

Q. Did you produce the documents?

A. I couldn't find them.

Q. You couldn't locate the documents?

A. No, sir.

Q. Did the subpoena call for your production of a doc-

ument in the form of a letter from Mr. E. C. Kinney, executive secretary, Ohio Builders' Supply Association, to you under date of July 25, 1931?

A. Yes, sir.

Q. That was a letter that you were unable to locate in your files?

A. Yes, sir.

Q. You don't know what became of the letter?

A. No, I don't. We don't keep our correspondence, and I suppose it is destroyed.

Q. I now show you a document marked as Commission's Exhibit 1043-DD, and ask you to state whether or not you recognize that as a photostat of Mr. Kinney's file copy of the letter that we asked you to produce under the subpoena?

10889 A. I don't recognize this letter in particular, but I do know that we wrote about that time about this subject. This appears to be a letter of Mr. Kinney's in answer to a letter that I wrote on that subject.

Q. And did it deal with the subject about which you had carried on correspondence with him?

A. Yes, sir.

10894 G. E. WARREN, called as a witness on behalf of
10895 the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am vice-president and manager of the Osborn plant of the Southwetesrn Portland Cement Company. I have held that position since March 1933. Previous to that I was assistant general manager of the Portland Cement Association located at Chicago for twelve years. Prior to my present position at the Osborn plant there
10896 was no similar position. There was a local manager, Mr. W. J. Jennings. He remained in that position until I took over there in 1933. He served there approximately 3 years, I think, before I took over as local manager.

Q. Mr. Warren, you were asked to produce a certain letter under subpoena here this morning; have you brought that with you?

A. We could not find such a letter.
Q. You could not locate the letter?
A. No, sir.

Trial Examiner Norwood: Here is a description of the letter as contained in the subpoena.

"Original letter from E. C. Kinney, Executive Secretary, Ohio Builders' Supply Association, Columbus, Ohio, to William J. Jennings, Southwestern Portland Cement Company, Osborn, Ohio, dated December 3, 1931."

By Mr. MacIntyre:

10897 Q. (Showing paper to witness) I show you Commission's Exhibit 1043-HHHH, and ask you to state whether or not you were searching, in compliance—that is, in response to that subpoena—for a letter of which this is a photostat of a file copy?

A. Well, I don't know.

Q. Were you looking in your files for a letter, original letter of which that is a photostat, of a file copy?

Mr. Leisure: Now, I object to that question. I do not see how the witness can answer that, unless he has the photostat before him.

He can say whether he was searching for a letter under —as described in the subpoena, but I do not see how he can say he was looking for the original of which that is a photostatic copy.

Trial Examiner Norwood: Not unless he can—

The objection is sustained.

Mr. MacIntyre: Now, Your Honor, I am merely asking him whether or not he so interpreted this subpoena in its description of a letter that was called for in the subpoena, so as to search for a letter, an original letter, of which this is a photostat of a file copy.

Mr. Leisure: Yes.

Trial Examiner Norwood: Well, you are assuming there something that this witness has not testified to.

10898 He does not know whether that is a photostatic copy or not. You can ask him if he has—

Mr. MacIntyre (Interposing): Your Honor—

Trial Examiner Norwood: —seen a letter that is similar to that.

10899 Mr. MacIntyre: Your Honor, it is clear that this is a photostat, and that it is a photostat of a copy of some letter.

Mr. Leisure: Not to this witness, it is not.

Trial Examiner Norwood: No.

Mr. Leisure: This witness may neither have seen the photostat nor the original.

Mr. MacIntyre: The photostat is before him; that is what I am showing him and asking him to look at.

Mr. Leisure: How could he search for it, when he has just been shown the photostat for the first time now?

Trial Examiner Norwood: You better base your question on the description that is contained in the subpoena duces tocum, and then he can say whether he has ever seen the letter similar to this photostat. You can question him on that, also, but I would not assume—assume that state of facts therein.

Mr. MacIntyre: Your Honor, I was not attempting to assume any state of facts; I was attempting to show this particular photograph of the letter to the witness.

Trial Examiner Norwood: Yes; I understand.

Mr. MacIntyre: I was asking him to look at this particular photograph of the letter.

10900 Trial Examiner Norwood: Yes.

Mr. MacIntyre: And I asked him, after looking at it, if it is not a photograph of a letter of which the original—the original of which he was asked to bring here.

Mr. Leisure: I object to the question.

Trial Examiner Norwood: Which he has not said he ever saw or knows anything about.

Mr. MacIntyre: He was searching for a letter. We want to know whether he was searching for an original of which this is a photostat.

Trial Examiner Norwood: Well, that has been ruled out.

By Mr. MacIntyre:

Q. Mr. Warren, I will ask you whether or not you searched your files for an original letter from Mr. E. C. Kinney, Executive Secretary of the Ohio Builders Supply Association, Columbus, Ohio, addressed to William J. Jennings, Southwestern Portland Cement Company, Osborn, Ohio, under date of December 3, 1931?

A. Yes, sir.

10901 Q. And you didn't find such a letter in your files?

A. No.

Q. Did you have files covering the period of 1931?

A. Yes, sir.

Q. In which such correspondence would have been, in your judgment, filed?

A. Well, I wasn't there then. I can't answer it.

10902 Q. I am asking, Mr. Warren, whether or not that if the company had followed the practices in 1931 in its filing of letters, that it now follows, under your supervision, assuming that as a state of facts, did you search the files into which you would have filed such a letter as that if it had been received today?

Mr. Leisure: I object to that. There has been no basis laid for a hypothetical question. The witness can be asked the facts as to what their filing systems are, but there is no basis for the hypothetical question.

Trial Examiner Norwood: I think in the last analysis that calls for a statement of facts. I will let the witness answer that. Objection overruled.

The Witness: Will you read the question again, please?

(Question read.)

Trial Examiner Norwood: Well, now, answer whether or not you searched such files as letters of this nature were usually filed in.

10903 A. Yes, sir.

By Mr. MacIntyre:

Q. And you didn't find the original letter that was called for in the subpoena?

A. No.

Q. Mr. Warren, in connection with the quotations of prices by the Southwestern from the Osborn, Ohio, plant and office, do you cover dealers on specific job contracts under such quotations over any particular period of time?

A. Yes, sir.

Q. How long a time do you usually cover dealers under quotations on proposed specific job contracts?

A. Well, no set time for that. That depends upon the probable length of the job, if it is a specific job. There is some estimate as to the probable length of that job.

Q. Well, I am talking now about the proposed job before the job is actually let, the coverage under the quotations that you extend to your dealer trade. Is that for a specific period such as 15 days, or something like that?

A. For acceptance, you mean?

Q. Yes.

A. I don't recall that.

Q. Can't you state whether or not you do, in issuing quotations to dealers for proposed specific contracts, issue to them quotations over a period of time within which they may accept?

10904 Mr. Leisure: Your Honor, I think it should appear that this witness is familiar with selling before he is asked questions along that line, because it may place the witness in a very embarrassing position if he is trying to answer as to a part of the business with which he has no contact.

Mr. MacIntyre: If your Honor please, I am asking this witness as to his own knowledge. He has already stated that he is general manager in the Osborn, Ohio, sales office of the Southwestern Portland Cement Company. We feel that that ought to qualify him to answer the questions now asked him.

Trial Examiner Norwood: Is there an objection pending now? Is there an objection?

Mr. Zimmerman: Have I? No, no, I haven't any.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Answer that question.

A. I don't recall. There are very few jobs quoted lately, and I don't remember what our practice is.

By Mr. MacIntyre:

Q. During the past two years, you would say you do not recall of having issued quotations protecting dealers under the specific job contracts in the State of Ohio?

A. Yes, we have.

10905 Q. What was the practice on those that you did so quote or issue quotation on?

A. I don't recall, sir.

Q. You don't recall whether it was fifteen days for acceptance, within fifteen days?

A. I think it was, but I am not certain.

Q. Well, Mr. Warren, isn't it a practice, a known practice to you, of your company, from the Osborn, Ohio, sales office, to quote on fifteen days' acceptance to dealers on proposed specific job contracts? Isn't that known to you as a practice of your company?

A. You speak of to dealers?

Q. Well, to anyone to whom it issues a quotation under a proposed specific job contract whether it is a dealer or a contractor or a road contractor, or whoever may be?

A. I think it is but I am not certain.

Q. Well, what leads you to think that it is the practice?

A. I am trusting my memory there and I can't answer exactly because I don't handle the sales correspondence.

Q. Who handles the sales correspondence at the Osborn plant?

A. Two other men in our office, Mr. Nolan and Mr. Apt.

Q. Mr. Apt?

A. Yes, sir.

Q. What is his first name?

A. E. V.

Q. Do you exercise supervision over those men in their sales efforts?

A. Yes, sir.

Q. And you do not know as to how much coverage or protection they issue to dealers and others under proposed specific job contracts?

A. Well, now, that doesn't seem to me to be the same question you asked about the quotations. They protect the contract for the duration of the contract.

Q. I am talking about the proposed contracts now, not the contract itself, but when a proposal for contract comes up and you quote to a dealer for protection for acceptance within a particular period on the pro-

10907 posed contract?

A. I am not certain whether that time is specified there or not.

Q. You don't know, then, what practice is followed by Mr. Apt and the other gentleman under your supervision in issuing dealer protection under proposed specific contracts, specific job contracts?

A. Well, in a general way, I do; yes, sir.

Q. Well, I ask you to state the period that they allow.

A. I think it is for the job which is under consideration. I think it is quoted for that job.

Q. For acceptance within what period of time?

A. That is where I am inexact; that is where I do not recall.

Q. Who sets the policy as to whether it would be 15 days, 30 days, or 60 days?

A. I do.

10908 Q. And yet you cannot recall as to the amount of time that you have set for those men to follow under your supervision?

A. Well, nothing has been referred to me of late, and I don't recall that, sir.

Q. Well, the last time it was referred to you, whether it was last year or two or three years ago, can't you recall the policy that is now in vogue under your supervision and at your direction?

A. I think it is fifteen days.

Q. Well, do you so testify that it is fifteen days?

A. Well, I will testify that I think it is.

Q. To the best of your knowledge and belief?

A. Yes, sir.

Q. And now as to this 15-day coverage, the dealer has a right to accept the quotation within that time, does he not?

A. Yes, sir.

Q. But does he, in doing so, that is, in giving him the opportunity to accept, commit himself to take any quantity of cement whatever? Must he take any quantity?

A. Will you state that again?

Mr. Norwood: Read that.

(Question read.)

By Mr. MacIntyre:

Q. In extending to the dealer the opportunity to take up an acceptance within 15 days, does he commit

10909 to you—does he commit himself to you to take any cement whatever or enter into any contract with you?

A. Oh, if he buys, he does.

Q. Yes; but if he doesn't? I mean, does he absolutely commit himself to buy cement within that 15 days, from you?

A. For delivery within 15 days?

Q. No; for any other time.

A. I don't understand that question.

Q. Well, may the dealer—

Trial Examiner Norwood: During the 15 days is it optional that he buy the cement or not under the proposal?

The Witness: Oh, yes.

By Mr. MacIntyre:

Q. But he need not buy any?

A. No.

Q. But if he does elect to exercise that option on the fifteenth day or the fourteenth day after you have issued it to him, whether it be for 10,000, 30,000 or 50,000 barrels, you would, under the option that you have given him, be compelled to enter into a contract with him to furnish that cement; isn't that true?

A. Yes.

Q. And in many instances, the specific job con-
10910 tracts or proposed specific job contracts, especially in the period of the proposal, are in the form of estimates, are they not?

A. Yes, sir.

Q. That is, as to the amount of cement, it is not exactly known as to how much?

A. No; it is an estimate.

Q. Only an estimate?

A. Yes, sir.

10913 *Cross-Examination by Mr. Leisure.*

Q. Mr. Warren, Mr. MacIntyre has just been asking you about cases in which you extended a 15-day period of protection to the dealers, during which period of time you are obligated to sell, whereas, the dealer, as you have said, is not obligated to purchase.

Have you ever, at any time, extended a four months' period such as the Government did in the Good Friday bids?

10914 A. What—four months?

Q. Yes, four months' period?

A. Well, that—

Q. Four months' period of protection. Hav you ever extended a period of that long?

A. I don't recall.

Q. If you had extended it for a period of four months you would recall it, would you not? Wouldn't that be something outstanding in your business experience?

A. We have extended—we have extended quotations in writing, renewed quotations.

Q. Yes.

A. Over more extended periods.

Q. Yes, you have renewed your one quotation. Have you ever issued a quotation on a four months' basis?

A. No, I don't think so; I can't recall any.

Q. For the 15-day period it would tie your hands as far as the shipment during that period,—you would be obligated to ship during the 15-day period, would you not?

10915 A. Oh, any time after the work began.

Q. Yes.

A. We would be obligated to ship.

Q. Yes. Now, can you think of any instance in which you have tied your hands for four months in which you would ship?

A. I don't recall.

Q. You do not know of any such instance?

A. During which we would ship?

Q. Yes.

A. Oh, yes, ship for the completion of the job.

Q. But I did not say that. Any quotation in which you have extended a protection—

A. I don't—

Q. —of four months.

A. I don't recall any; no, sir.

Q. I see.

Mr. Leisure: That is all.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Warren, on this question of extending protection to dealers for acceptance within fifteen days. I believe I understood you to say to Mr. Leisure that you do not tie your hands. Did we understand you to say that it did not tie your hands because no contract had been

10916 entered—committing you to ship any cement until the dealer had given you—that is, had exercised his option under that fifteen days?

A. I think I misunderstood his question. He was asking about quotations, and I thought he meant shipments. He said shipments, I believe.

Q. But you are not committed under quotations which is in the nature of a bid to the dealer for his business, you are not committed in any way, are you, other than to—that is, to fulfill your contract with them—you are not

tying your hands except when he exercises the option you have given him; is that not correct?

A. That is correct.

10917 Q. Now, when he does exercise that option, especially on a large specific job contract, it is sometimes referred to as calling for—an estimated 700,000 to 900,000 barrels, you do, in that case, exercise your—I mean, commit your company and tie its hands to fulfill that contract, to all the cement, to ship all the cement required on that job, whether it is 700,000 or 900,000 barrels, isn't that true,—once it entered into it?

A. The practice varies a little there. Some proposals permit a percentage over-run and some specify for the job.

Q. Although the job is an estimated job?

A. Yes, sir.

Q. And it varies considerably according to the efficiency and the manner in which the engineers have figured out the requirements?

A. I think so.

Q. Is that true?

A. I think so.

Q. Now, coming back to the 15-day option that you give to the dealers—that Mr. Leisure questioned you about there on cross-examination, you tie your hands, or commit your company to not one dealer but a great many dealers, in so far as it does commit your company as to a single specific job contract, do you not,—probably ten or fifteen dealers who may be quoting on that particular job?

10918 A. Well, hardly that many, there could be several, or there could be one.

Q. But in general practice there are several, in a great many instances?

A. In a great many instances.

Q. And if all of them placed contracts with you for the estimated quantity, until you had had an opportunity to check back and determine whether or not all of that cement was required on the job, you would be committing your company to several times what might be required on the job, would you not?

A. Well, we would scarcely enter into a contract with several different people for the same particular job.

Q. But you do commit yourself to the several in the

event that they do get the job,—you leave that condition in?

Mr. Zimmerman: You mean they all get the job?

Trial Examiner Norwood: Each.

By Mr. MacIntyre:

Q. To each one, regardless of which one does get the job?

A. Yes, we offer it to each one we quote.

Mr. MacIntyre: That is all.

Recross Examination by Mr. Leisure.

Q. But you do not commit yourself to anyone except the winner, do you?

A. No, sir.

10919. Q. Do you commit yourself, if there are ten bidders, to supply all of them, until one of them is a winner?

A. No.

Q. That is, there is only one bidder that can be the successful one, and will complete the job, isn't that so?

A. Yes.

Q. And in the case of the Government, the one bidder is the winner; isn't that so?

A. Yes, sir.

Q. Now, on this 700,000, isn't that a pretty large order, or have you operated on that scale recently?

A. No, sir.

Q. How much did you ship from your Osborn plant last year?

A. You mean 1937?

Q. Yes, if it is not confidential.

A. Well, it is not,—about 700,000 barrels, of all cements.

Q. Every kind?

A. Yes, sir.

Q. How much standard?

A. About 500,000—a little over that, sir.

10922 W. W. CAMPBELL was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Campbell, I believe that you have a subpoena to produce certain documents here today.

A. Yes, sir.

10923 Q. Did you bring the documents with you?

A. No, sir; I couldn't locate them.

Q. Could not locate any of the documents?

A. No, sir.

Q. That are called for in your subpoena?

A. No, they were kept in the Cleveland office, and a transfer—I looked for them and could not find them.

Q. And the descripton, however, of them, is clear in the subpoena—

A. Yes, sir.

Q. —so that if you could have found them you would have recognized them?

A. Yes, sir.

Trial Examiner Norwood: The description of the documents as appears from the subpoena duces tecum is as follows:

"File copy of a letter from W. W. Campbell, Campbell Company, New Wilmington, Pa., to "In charge of Traffic, All Railroads," dated January 22, 1931.

"Original letter from Daniel Willard, President, Baltimore & Ohio Railroad Company, Baltimore, Maryland, to W. W. Campbell, President, National Builders Supply Association, New Wilmington, Pa., dated June 23, 1931.

10924 "Original letter from D. H. McFarland, an official of the Medusa Portland Cement Company, Cleveland, Ohio, to W. W. Campbell, President, National Builders Supply Association, New Wilmington, Pa., dated July 25, 1931.

"Original letter from D. H. McFarland, an official of the Medusa Portland Cement Company, Cleveland, Ohio, to W. W. Campbell, President, National Builders Supply Association, New Wilmington, Pa., dated July 29, 1931.

"Original letter from J. L. Eysmans, Vice-President of Traffic, Pennsylvania Railroad Company, Philadelphia,

Pa., to W. W. Campbell, President, National Builders Supply Association, New Wilmington, Pa., dated August 21, 1931.

"Original letter from R. H. Hilderbrand, Secretary of the Indiana Builders Supply Association, South Bend, Ind., to W. W. Campbell, President, National Builders Supply Association, New Wilmington, Pa., dated October 23, 1931.

"Original letter from J. L. Eysmans, Pennsylvania Railroad Company, Philadelphia, Pa., to W. W. Campbell, New Wilmington, Pa., dated November 12, 1931.

"Original Western Union telegram from J. L. Eysmans, Philadelphia, Pa., to W. W. Campbell, Campbell
10925 Company, New Wilmington, Pa., dated February 13, 1932."

The witness identified Com. Ex. 1043-A as a letter. He remembers such a letter. He remembers sending out a letter of which this is a copy. He does not know to whom "it" went, but he remembers all this. (Witness indicates with finger the first paragraph of the document.)

He does remember the contract, and a letter,—just as to "who" it went he does not remember that part, but he knows it went to the various concerns, because that is about where it would go. He remembers this part very definitely. (Witness again refers to the first paragraph of the document in question.) He remembers the contents of a letter on this point that he sent out to railroad officials. He does not mind it going to railroad officials any more than to cement companies. It went to
10926 both cement companies and railroad officials as far as he can recall that first instance distinctly. He does not recall F. W. Paulson. There was a Mr. Paulson in Pittsburgh in the sand and gravel business. The witness would not like to say whether it is that one or some one connected with some other company. He does not recall whether the reference "there" is to Mr. F. W. Paulson, vice president of the Lehigh Portland Cement Company, at Allentown, Pa. This was a letter which (the Federal Trade Commission) asked the witness to produce, and he was not able to find his file copy; the
10927 witness identified Com. Ex. 1356 as a letter written by him to Mr. W. W. Atterbury, then president of
10928 the Pennsylvania Railroad; Com. Ex. 1043-Q as a copy of a letter that he imagines he wrote to

Mr. J. J. Bernet, the president of the C. & O. Railroad, because he was given six or seven names to whom to send the letter. The witness would not recall whether "his" was one of them or not, but he imagines it was. He recognizes "this" as the letter that he sent out; he remembers this part of it very distinctly (indicating). "That" is the one that carries the dates of the meetings, Tuesday, July 7th, Wednesday, July 8th, Tuesday, July 14th, Wednesday, July 15th. That is, suggested dates for meet-
10929 ings; that is the point that is fresh in his mind. He would not recall whether Com. Ex. 1043-R, "that particular letter", came to him or not, but he knows that he sent Mr. Willard a letter about that date, on the subject that is mentioned in "that letter" and the witness does know that he replied. The witness does recall correspondence with him on or about that date on that subject, but he could not find the original letter, of which this is a copy that (the Federal Trade Commission) asked
10930 for under the subpoena; Com. Ex. 1043-S as a letter he probably received. Mr. Julien Eysmans of the Pennsylvania Railroad was the man to whom the correspondence was first sent, if the witness' memory serves him correctly; "that" was referred to some one and probably Mr. Denny in Cleveland. If his mind serves him rightly, the witness wrote this man, as one of the names given him, as he recalls it. That was referred to some one here in Cleveland, if it is an associated line; if the C & O is associated with the Erie, if his mind serves him correctly, he recalls that some one to whom a letter was written referred it to some other railroad official, Mr. Bernet. Probably Mr. Bernet "relegated" Mr. Denny to represent him at the meetings. Copies of the cor-
10931 respondence, Com. Ex. 1043-Q and S, may have been sent to Mr. Eysmans, because all the witness' letters and so forth, when he got them—he did not know he would have to refer to them again—were just simply forwarded to the Cleveland office here, which was "our" headquarters of the national association, and they might have, in turn, sent copies of "that" to the various people. He would not recall that, but it is quite likely. He would not say that he gave them instructions to notify the interested parties concerning this correspondence, because he does not recall that, but since it was the office, the secretary there, who was sort of manager, if he thought it was

advisable to forward that communication to somebody else, might have done so. He might have sent copies of the correspondence such as he had with these other officials to Mr. Eysmans of the Pennsylvania Railroad. He
10932 would not recall it. He does not recall having sent him some of the correspondence, but it is quite likely that he did; Com. Ex. 1043 U and V as a copy of the letter which he sent to Mr. Daniel Willard, President of the Baltimore & Ohio Railroad. If you were to ask him, he would say "that" is authentic (indicating), because he remembers distinctly that Mr. Willard happened to be over at the C & A at that time, and he delegated somebody else; the witness put two and two together, and that is it; Com. Ex. 1357 as his letter to Mr. Julien
10933 Eysmans. That is his signature on it; that is his signature also on Com. Ex. 1356; Com. Ex. 1359 as his letter to Mr. Eysmans. That is his signature. The witness was shown a document marked as Com. Ex. 1043 CC, and asked to state whether or not he recognizes "that". The witness said that if he could remember the cartoon he could tell but he could not remember the cartoon. A picture would recall it to his mind. Mr.
10934 "McFarland" of Medusa and the witness had several letters of correspondence with each other, and they were probably communicated to Mr. Eysmans to show him what was being done. The witness had several letters from Mr. "McFarland". "That" is probably one of them. He does not know as to transmitting materials of the nature that is described "there", but he does know that "we" had correspondence about that; Com. Ex. 1455 as looking like the carbon copy of Com. Ex. 1043 CC.

10936 Q. Did you have letters going back and forth on this particular subject, as you recall at this time?

A. Not on the cartoon subject, but we had in reference to the closing of the plants to the dealers.

Q. On the trucking of cement?

A. On the trucking of cement.

The witness was shown a document marked as Com. Ex. 1043 GG, and one marked as Com. Ex. 1456, for identification, and asked to state whether or not he recognizes those. He said: "Well, that is addressed to me, but I wouldn't—I don't recall the cartoons". He does not recall correspondence with Mr. "McFarland" on the question of trucking cement at this time about that date, but he does

not recall the cartoon. If he did, it would come
10937 fresh to his mind; the witness identified Com. Ex.
1358 as a letter coming out of the Cleveland office (indicating) to Mr. Julien L. Eysmans. It was sent out under the witness' orders, and sent down to him, and he signed it. That is his signature. Most of the letters were written in Cleveland and then sent to him for signature, because he had no secretary, no stenographer; the witness was shown Com. Ex. 1043 RR, SS, TT and UU, and asked to state what he considered those four documents
to be, whether he recognizes them. He recognizes
10938 in content what this has to say, and this, to his
10939 mind proves it (indicating) that this is correct (indicating). He is referring to Com. Ex. 1043 RR, SS and TT. ((In)) saying this proves it, he is talking about Com. Ex. 1943 UU. The heading and the contents of Com. Ex. 1043 UU are alike. He recognizes that as a letter from him to Mr. Eysmans, and others. He would say that he recognizes Com. Ex. 1043 RR, SS and TT as documents referred to in the first paragraph of Com. Ex.
1043 UU, that provoked his letter. He is positive
10940 as to his identification of Com. Ex. 1043 UU, and the letter from him to the people to whom it was purported to have been written; Com. Ex. 1043 ZZ as a letter from Mr. Eysmans to him; Com. Ex. 1353 as his
letter to Mr. Eysmans; that is his signature. The
10941 pencil notation at the bottom, "Mr. 'McFarland', who was with me in New York is V. P. of Medusa", is in his handwriting; the witness was shown a document marked as Com. Ex. 1043 XXX and asked to state whether or not he recognizes that. He said: "I don't—I don't recall that letter quite as coming to me—but I don't recall it as set apart—". He does not recall it as a letter that Mr. "Hilderbrand" sent to him, and which he, in turn, sent on to Mr. Eysmans, but he probably did that along with the rest of them. It is very possible that he received a correspondence about that date from Mr. "Hilderbrand" on the subject with which the letter marked Com. Ex. 1043 XXX is concerned, because in the end it
was—"they were as interested as we were". He
10942 would not recall whether he did have correspondence with Mr. "Hilderbrand" on that subject about that date, but it is quite possible that he did, but he would not say definitely because he—but Mr. "Hilderbrand" was

secretary of the independent association; it is quite possible the witness had correspondence with him, and he wrote the witness and the witness wrote him. He knew that Mr. "Hilderbrand" as the secretary of that association, was interested in the treatment of the trucking problem, just as he was at that time; Com. Ex. 1351 as his letter to Mr. Eysmans; that is his signature.

"Trial Examiner Norwood: Does that enable you to identify the previous one?

"The Witness: Yes, it would, because that tells it.

10943 "Q. Now, does that help your recollection as to this?

"A. Yes, that refers to it specifically here, you see that shows that I did get it.

"Trial Examiner Norwood: The last one was what number?

"The Witness: But concerning this, you see, I referred in this letter, and this is my letter, so I must have gotten that one.

By Mr. MacIntyre:

"Q. That is, you were talking about Commission's Exhibit 1351, and Commission's Exhibit 1043 XXX?

"A. Yes.

"Q. You are talking about Commission's Exhibit 1043 XXX as the letter which is referred to in Commission's Exhibit 1351?

"A. Yes, that's correct."

The witness identified Com. Ex. 1349 as his letter to Mr. Eysmans. That is his signature at the bottom

10944 of Com. Ex. 1349; Com. Ex. 1043 JJJJ as a letter to him from Mr. R. N. Collyer, Chairman of the Trunk Line Association of New York; Com. Ex. 1155 as his letter to Mr. Collyer. That is his signature at

10945 the bottom of the letter; Com. Ex. 1345 as a copy of a telegram which he received from Mr. J. L. Eysmans. He never saw the original, but he knows that he got "that". He recognizes the telegram; he received it; Com. Ex. 1344 as his reply to the telegram which is marked as Com. Ex. 1345; Com. Ex. 1355 as a memorandum which the witness sent to Mr. J. L. Eysmans of

10946 the Pennsylvania Railroad; Com. Ex. 1350 as a copy of a letter which J. L. Eysmans of the Pennsylvania Railroad sent to the witness, under date of

November 12, 1931; Com. Ex. 1489 as his letter to D. H. "McFarland" of Medusa. That is his signature at
10947 the bottom of the letter; Com. Ex. 1488 as a reply to his letter, which is Com. Ex. 1489; 1487 as a telegram which he probably received. He does not say that he recalls having received a telegram of that type from Mr. T. E. Denny in particular. He got several telegrams, and that's probably it,—but just that particular telegram he would not say; Com. Ex. 1486 A as a copy of a
10948 letter that the witness wrote to Mr. Daniel Willard; the witness sent a copy to Mr. "McFarland".

Q. Now, I notice on the fifth paragraph of Commission's Exhibit 1486-A, a statement that you had talked with leading officials in the cement industry.

Mr. Leisure: Is that in evidence, Mr. MacIntyre?

Mr. MacIntyre: No, this is going to the identification of the document.

Mr. Leisure: Well, that is not—please do not state on the record the letter in which you state—the contents.

Mr. MacIntyre: Just a second, then.

By Mr. MacIntyre:

Q. Mr. Campbell, I now refer you to Commission's Exhibit 1043-U-V, which is a copy of Commission's Exhibit 1486-A-B, and ask you if you can state at this time the names of the leading officials of the cement industry which you stated that you had talked with concerning that matter?

A. I wouldn't know.

Q. Or at least some of the names?

A. I wouldn't recall now; I wouldn't know.

Q. Can you recall at least some of them?

A. No, there were about ten in New York.

Q. Was Mr. Blain S. Smith one of them, of the Penn-Dixie?

A. Of the Penn-Dixie? Now, I am not saying
10949 these are the men, but in all probability it was Blain Smith.

Mr. Leisure: Just a moment. I will object to that.

Trial Examiner Norwood: I think you will have to testify from your own recollection only.

Mr. Leisure: I do not want probabilities; if he remembers having had a conversation—

Trial Examiner Norwood: Yes.

Mr. Leisure: —with one manufacturer or more—

The Witness: Your Honor—

Mr. Leisure: —we can have that.

The Witness: —as president of the National Builders' Supply Association, I was in New York every few weeks, and was talking with all the cement companies, with twelve of them; they wouldn't be on this or wouldn't be on the other, and to specify what ones, I can't do it, so that's the reason I say, because I was in Mr. Blain Smith's office quite often,—I was in the International with Mr. Koch, and some other men, in the Lehigh with Bert Swett, and other people, and I was up in the other cement companies, and their offices, and when you are in there every month talking with them it is pretty hard to recall just what or who you talked with on that one thing, and that's the reason I can't remember.

10950 Q. Well, when you made reference to the fact that you had talked with leading officials, with leading officials of the cement industry regarding the meeting in New York—

Mr. Leisure: Now, is that the exhibit—

Mr. MacIntyre: That is in evidence, Mr. Leisure.

Mr. Leisure: How?

By Mr. MacIntyre:

Q. —did you have reference to the meetings and conferences that you had had with the officers, to which you have just made reference when you made that statement in that letter—that is, the people in the offices of the leading producers, such as Lehigh, and Penn Dixie, or just whom, can you tell today that you did have those conferences with?

A. I wouldn't, for the reason that I have just told you, I couldn't name any one definite company, because I was in the offices of all of them, and whether it was just before this, or whether it was on other matters, marketing policies, or on this and things like that, that we were always taking up, discounts, and things like that, that we were always taking up with them.

Q. But you do recall at this time that you did visit the offices of the Penn Dixie, the Lehigh, the Alpha, and the other leading producers of cement and discussed various problems with them?

10951 A. Yes.

Q. As representative of the National Builders Supply Association?

A. Yes, sir. Yes, sir.

Q. And you named in that connection Mr. Bert Swett of the Lehigh?

A. Yes, sir.

Q. And Mr. Blaine Smith of the Penn-Dixie?

A. Yes, sir.

Q. Mr. Campbell, I now show you a document which has been marked, for identification, as Commission's Exhibit 1485, and ask you to state whether or not you recognize that as a copy of a letter from Mr. Daniel Willard of the B & O Railroad Company to you, and a copy of which you sent to Mr. McFarland of the Medusa?

A. Yes, sir.

Q. I now call your attention to a document marked, for identification, as Commission's Exhibit 1484, and ask you to state whether or not you recognize that as a copy of a letter from Mr. C. E. Denny of the Erie Railroad to you, and the copy of which you sent to Mr. McFarland?

A. Yes, sir.

Q. I now show you a letter marked, for identification, as Commission's Exhibit 1483, and ask you to state whether or not you recognize that as a copy of a

10952 letter from Mr. J. J. Bernet, Chesapeake & Ohio Railroad, to you under date of June 26, 1931, a copy of which you sent to Mr. McFarland?

A. Yes, sir.

Q. I now show you a document marked, for identification, as Commission's Exhibit 1482, and ask you to state whether or not you recognize that as a copy of a letter from you to Mr. F. J. Crowley?

A. Yes, sir.

Q. President of the New York Central Railroad?

A. Yes, sir.

Q. Do you recognize the contents of that letter as the contents of a letter that you sent to not only Mr. Crowley but others?

A. I do.

Q. I believe, in that connection, that you referred to another exhibit that carried the contents as to the proposed and suggested dates of the meeting in New York as Tuesday, July 7th?

A. Yes, sir.

Q. Wednesday, July 8th, Tuesday, July 14th, Wednesday, July 15th?

A. Right.

10953 Q. I now show you a document marked, for identification, as Commission's Exhibit 1481, and ask you to state whether or not you recognize that as a copy of a letter from Mr. J. L. Eysmans to you under date of June 17, 1931, a copy of which you sent Mr. McFarland?

A. I do.

Q. I now show you a document marked, for identification, as Commission's Exhibit 1480, and ask you to state whether or not you recognize that as a copy of a letter from you to Mr. Holway of the Youngstown Ice Company?

A. Yes.

Q. A copy of which you sent Mr. McFarland?

A. Yes.

Q. I now show you a document marked, for identification, as Commission's Exhibit 1479, and ask you to state whether or not you recognize that, and, if so, as what?

A. Yes, sir; that is mine.

Q. That is your signature?

A. Yes, sir.

Q. It is a letter from you to Mr. McFarland?

A. Yes, sir.

Q. Would you say that that is the letter with which you transmitted the correspondence you just identified under the numbers 1480 to 1487, inclusive?

A. Yes. Yes.

10954 Q. I now show you a document marked, for identification, as Commission's Exhibit 1477, and ask you to state whether or not you recognize that as a copy of a letter from Mr. McFarland, of the Medusa Company, to you?

A. I do.

Q. And I also show you Commission's Exhibit 1466, and ask you to state whether or not you recognize that as a copy of a letter from Mr. C. J. Brister, of the New York Central Railroad, to you, a copy of which you furnished Mr. McFarland?

A. If it is in there, yes. I remember Mr. Brister couldn't be there, and I would say yes.

Q. I now show you a document marked as Commission's Exhibit 1475, and ask you to state whether or not—

A. Yes.

Q. —you recognize that?
A. I do.
Q. As what?
A. A telegram I sent.
Q. To Mr. McFarland?
A. The McFarland.
Q. The vice-president of the Medusa Portland Cement Company?
A. Yes. Yes, sir.

Q. I now show you a document marked, for iden-
10955 tification, as Commission's Exhibit 1474, and ask you to state whether or not you recognize that as containing copies of telegrams passing between you and Mr. Daniel Willard of the Baltimore & Ohio Railroad, and between you and Mr. Julien L. Eysmans, of the Pennsylvania Railroad?
A. Yes.
Q. I show you a document marked, for identification, as Commission's Exhibit 1470, and ask you to state whether or not you recognize that, and, if so, as what?
A. That is on my order, and by my bookkeeper.
Q. That is, your name was signed to that by your bookkeeper?
A. Yes.
Q. And what is her or his name?
A. It had my O. K. or she never would have signed it.

10956 Q. Well, you recognize it as her handwriting?
A. Yes; I know her handwriting.
Q. And would you say that Commission's Exhibit 1473—

Mr. MacIntyre: By the way, change the number on it as 1472 we were referring to instead of 1470.

By Mr. MacIntyre:

Q. Would you say that Commission's Exhibit 1473, for identification, is an enclosure of the names of people who were going to attend the meeting that is referred to in Exhibit 1472?
A. Yes.

Mr. Leisure: I object to that. How can this witness tell whether certain people were going to attend a meeting or not. We have had a series of dictations here of exhibits. I think we ought to stop somewhere.

Trial Examiner Norwood: Read that question.
(Question read.)
A. Yes, of the people to whom I sent the telegrams.

By Mr. MacIntyre:

Q. And asking them to attend the meeting?
A. Yes, sir.
Mr. MacIntyre: In connection with Mr. Leisure's objection, I would like to call attention to the fact that this witness has already testified concerning that
10957 meeting.
Trial Examiner Norwood: Yes.
Mr. MacIntyre: On previous occasions.
Trial Examiner Norwood: The objection is overruled.

By Mr. MacIntyre:

Q. I now show you a document marked, for identification, as Commission's Exhibit 1471, and ask you to state whether or not you recognize that as a copy of a letter from Mr. McFarland to you under date of July 14, 1931?
A. I wouldn't know. He was there.
Q. Did he inform you that the July 22nd meeting date was satisfactory to him?
A. I don't recall whether he did or not, but he was there.
Q. He attended the meeting?
A. He attended the meeting.
Q. Now I show you a document marked, for identification, as Commission's Exhibit 1470, and ask you to state whether or not you recognize that, and, if so, as what?
A. Yes, sir; that is my letter.
Q. Is that your signature at the bottom of it?
A. Yes, sir.
Q. You recognize it as a letter from you to Mr. D. H. McFarland?
10958 A. Yes, sir.
Q. Of the Medusa Portland Cement Company at Cleveland?
A. Yes, sir.
Q. About the footnote in red type at the bottom, that is one you placed on there?
A. That is mine.
Q. I now show you a document, marked, for identification, as Commission's Exhibit 1468, and ask you to state whether or not you recognize that.

A. I must have gotten that cartoon; yes, sir, that is my letter.

Q. That is your signature at the bottom of it?

A. Yes, sir, but I don't remember the cartoon.

Q. That is a letter to Mr. D. H. McFarland under date of July 29, 1931?

A. Yes, sir.

Q. Now, I ask you to look at the document marked, for identification, as Commission's Exhibit 1468, again, and in that connection, also examine Commission's Exhibit 1043-CC, and I ask you to state whether or not you can recollect correspondence with Mr. D. H. McFarland on or about July 25, 1931, relating to certain cartoons on the trucking situation?

A. Well, this proves that I did, but I don't remember the cartoon.

10959 Q. In other words, you say that Commission's Exhibit 1468, for identification, proves—

A. Proves this one (indicating).

Trial Examiner Norwood: Proves which one?

By Mr. MacIntyre:

Q. Proves 1043-CC?

A. The one that I couldn't remember the cartoons, your Honor.

Q. I now show you a document marked, for identification, as Commission's Exhibit 1465, and ask you to state whether or not you recognize that, and, if so, as what?

A. What is that?

Mr. Leisure: What is the last number, please?

Mr. MacIntyre: 1465.

A. I think I do.

By Mr. MacIntyre:

Q. Do you recognize it as a copy of the letter from Mr. McFarland of the Medusa Company to you?

A. I believe I do. That is faint, but I think I do.

10960 Q. I show you a document marked, for identification, as Commission's Exhibit 1462, and ask you to state whether or not you recognize that, and, if so, as what?

A. That is mine; yes, sir.

Q. That is your signature at the bottom of that letter?

A. Yes, sir.

Q. You recognize it as a letter from you to Mr. McFarland?

A. Yes, sir.

Q. I now show you Commission's Exhibit, for identification, 1461, and ask you to state whether or not you recognize that as a reply from Mr. McFarland to you of your letter?

A. Yes.

Q. Of August 30, 1931?

A. Yes.

Q. Of which 1462 is the original?

A. Yes, sir.

Q. Mr. Campbell, I would like for you to state whether or not you did have correspondence with representatives of other cement manufacturers than Mr. McFarland on this subject—that is, the subject of the trucking of cement from manufacturers' warehouses?

A. I don't recall that I did.

Q. Well, can you state, then, why it was that you selected Mr. McFarland as a cement manufacturer and as the only one with whom you had such correspondence on that subject at that time?

10961 Mr. Leisure: Now, I object to that as arguing with the witness. The witness has answered the question as to the fact—

Mr. MacIntyre: That he didn't have. I am asking him now why.

Mr. Leisure: And to ask him why he doesn't know—

Trial Examiner Norwood: Why, I think he can tell, give his reasons for negotiating with this one man. Objection overruled.

A. President of the Cement Institute.

By Mr. MacIntyre:

Q. That is, you felt that he represented all of the manufacturers as president of the Cement Institute?

A. Yes, sir.

Q. Yes.

Mr. Leisure: I object to what he felt.

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. I now ask you, in further reference to a document marked as Commission's Exhibit 1470, for identification,

to state whether or not you did, in fact, call upon Mr. McFarland and Mr. Holway at the New York meeting to state the purposes of the meeting?

A. I did.

10962 Q. They stated the purposes of the meeting to be as you previously testified the purpose of the meeting to be?

A. Yes, sir.

Q. That also goes to the position of the manufacturers on the meeting as well as the purposes of the meeting that Mr. McFarland included in his statement?

Mr. Leisure: Now—

A. No.

Trial Examiner Norwood: Wait a minute.

Mr. Leisure: As to manufacturers, it seems to me with so many Respondents we should know what manufacturers Mr. MacIntyre has reference to. He says "the manufacturers." That would take in every one named in the complaint, the Pacific Coast—

Trial Examiner Norwood: Read the question.

Mr. Leisure: —the Pacific Coast as well as the Atlantic Seaboard.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: I would like to have that last question stricken and to restate it, if I may.

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. I will now ask you, Mr. Campbell, to examine a document marked as Commission's Exhibit 1470, and, particularly the last sentence in the red typed

10963 notes, and ask you whether or not after refreshing your memory and recollection on that point you can state whether you did call upon Mr. McFarland to state the angle of the manufacturers at the meeting?

A. I did.

Q. And did he do so?

Mr. Paulson: Commission's Exhibit, for identification.

A. Briefly—

Mr. Paulson: Commission's Exhibit, for identification.

Mr. MacIntyre: I was referring to Commission's Exhibit, for identification, 1470.

That is all, Mr. Campbell.

Trial Examiner Norwood: Examine.

Cross-Examination by Mr. Leisure.

Q. Mr. Campbell, I understood you to say on direct examination conducted by Mr. MacIntyre as to Exhibit 1043-A, that you recognized that letter?

A. Yes, I did.

Q. Now, that is addressed to the railroads, is it not?

A. It was sent out of the Cleveland office with my dictation and sent to all the railroads.

Q. Yes. Was it sent to anyone else besides the railroads?

10964 A. I could not say.

Q. As to Exhibit 1043-S, you were shown 1043-S and 1043-Q, and you said something about one proving the other. I didn't catch what you said.

A. Well, I remembered this (indicating).

Q. You remembered everything—

A. Very distinctly in my letter, yes, so this reinforced this (indicating). Because I remember—

Q. You remember having—

A. Yes.

Q. Do you remember having written this letter to Mr. Bernet; is that it?

A. I sent it to all the railroads of the—

Q. I am just asking about this one, Mr. Campbell.

A. Well, if his name was in the list that I got, it went to him.

Q. Yes, but I am asking you about this specific letter. Do you recall having written this letter to Mr. Bernet?

A. May I tell you again that I had a list of five or six railroads to whom I was to write. If his name was in it—I don't recall his name specifically—but if his name was in it, that is where it went. But the letter was—

Q. Looking at it now, Mr. Campbell, do you have any independent recollection of having written that letter at all?

A. I would say yes, yes, I have of the letter itself.

10965 Trial Examiner Norwood: He was referring to Exhibit 1043-Q.

The Witness: Yes.

By Mr. Leisure:

Q. Then you recall that you wrote such a letter?

A. Yes.

Q. Is that it?

A. Yes.

Q. Now, I didn't understand what you said about it proving 1043-S. Do you recall having received 1043-S?

A. Yes, sir; I recall receiving that letter.

10966 By Mr. Leisure:

Q. This is Commission's Exhibit 1043-CC. Do you recall having received that letter?

A. There is another letter following this that proves that I did get it, because my answer refers to it.

Q. Do you recall having done anything with this letter after you received it?

A. I do not recall having done anything with it, excepting sending it, and it was my custom—

Q. I am talking about this letter, Mr. Campbell.

A. I know.

Q. Do you recall having done anything with the letter after you received it?

A. All of my letters went to the Cleveland office with instructions—

Trial Examiner Norwood: Well, now—

The Witness: (Resuming)—I just sent out carbon copies to all of them.

By Mr. Leisure:

Q. So your best recollection is that you may have sent this to the Cleveland office?

A. Yes, sir.

Q. That was because you had no secretary, I think you said?

A. No secretary, but—

10967 Q. You sent it—

A. —they carried out my instructions.

Q. And your office was the—the office you sent it to was the Dealers Association, was it not, Mr. Campbell?

A. Yes, sir.

Q. (Showing paper to witness) Commission's Exhibit 1043-RR, Mr. Campbell, that you will see, is from a Mr. MacQueen, executive manager of the Pittsburgh Building Supply Club, to a Mr. Fred C. McKee—did you say that you had something to do with that letter?

A. No, sir.
Q. Do you know anything about the letter at all?
A. I received a copy of it.
Q. You received a copy of it?
A. Yes, sir.
Q. Now, you were also asked with regard to Commission's Exhibit 1043-SSS, whether or not you received that letter (showing paper to witness); do you recall that?
A. I received that letter, because the letter from me and this proves that I did.
Q. Yes. Do you recall what you did with the letter after you received it, if anything?
A. I possibly ordered—
Q. Not possibly.
A. Oh.
10968 Q. Do you recall, and if you do not, please do not say so.
A. I do not recall whether there were carbon copies made of it or not.
Q. You do not recall whether you did anything with it or not; as a matter of fact, do you?
A. No. It was mailed to the Cleveland office.
Q. What is that?
A. It was mailed to the Cleveland office.
Q. Do you recall having mailed it to the Cleveland office?
A. I sent all my mail there.
Q. You sent all your mail there?
A. Yes, to keep the Cleveland office in touch.
Q. (Showing paper to witness) Commission's Exhibit 1488, Mr. Campbell; do you recall having received that letter?
A. Yes, sir.
Q. Is that also a letter that you sent to the Cleveland office, or the Dealers Association?
A. It would go there when it came to me.
Mr. MacIntyre: Pardon me, may I ask the number of that one, please?
Mr. Leisure: 1488.

By Mr. Leisure:

Q. (Showing paper to witness) This is Exhibit 1487. Did you receive that?

10969 A. This one?

Q. No, this is it; see the number here (indicating to witness).

A. Oh—(witness examines paper)—yes, sir.

10970 Q. That is, it would, in the ordinary course, have been forwarded to you in the Cleveland office—

A. No, I forwarded it—

Q. —to the dealers?

A. I forwarded it to the Cleveland office.

Q. Sir?

A. I forwarded it to the Cleveland office; that came to me at New Wilmington.

Q. Yes.

(Showing paper to witness) Commission's Exhibit 1486-A and B,—1486 being a letter from you to Mr. Willard.

A. Yes, sir.

Q. You wrote that?

A. Yes, sir.

Q. And then did you send it to your Cleveland dealers association office?

A. Yes, sir.

Mr. MacIntyre: Off the record.

Mr. Leisure, are you referring to the Cleveland office of the National Builders' Supply Association, or what association were you referring to?

Mr. Leisure: He referred to it as his office in Cleveland. I presume that is what he meant.

By Mr. Leisure:

Q. Is that right?

10971 A. As the National Builders' Supply Association.

Mr. MacIntyre: On the record, then, may we ask that the witness clarify the statement to show that when he says his Cleveland office that he means the Cleveland office of the National Builders Supply Association?

Trial Examiner Norwood: Is that right?

The Witness: That is right, Your Honor, because I always was carried on as president of the National Builders' Supply Association.

By Mr. Leisure:

Q. Now, Mr. MacIntyre in a series of questions on this exhibit, and others, asked you if they were exhibits which

you received and passed on to Mr. McFarland. Now, you have told me that you passed them along to the Cleveland office, and you have told Mr. MacIntyre, at least you have said "Yes" when he asked you that question.

Which is correct,—did you pass them on to Mr. McFarland or did you pass them on to the Cleveland office?

A. I passed them on to the Cleveland office, and I passed them on to Mr. McFarland and every person connected with it.

Q. Which ones—this one (indicating)?

A. Yes, sir; if that letter came in to me from Mr. Willard it went clear down the line, through the offices.

Q. Now, as to this Commission's Exhibit 1486
10972 and Exhibit 1487 (showing to witness)—did you send a copy of that to Mr. Eysmans, the ones I just showed you?

A. Yes.

Q. Not out of your own office, however?

A. No, because all the correspondence was handled in Cleveland; I dictated it and sent it to Cleveland.

Mr. Leisure: I think that is all.

Redirect Examination by Mr. MacIntyre.

Q. Just a question or two here.

Mr. Campbell, I would like to look at that Commission's Exhibit 1043, please.

(Mr. Leisure hands exhibits to Mr. MacIntyre.)

Q. Referring again to Commission's Exhibit 1043-A, do we understand you to say, Mr. Campbell, that—that is, on your direct examination—that you had sent that letter not only to officials of railways, but also to officials of ce-
ment manufacturers?

10973 A. I don't remember. I don't think I said to officials of cement manufacturers. I sent it to a list of five or six names that I had of the railroads, the list that I was given, whether it went to the manufacturers or not, I do not recall.

Q. You do not recall whether it also included the cement manufacturers?

A. No, but in all probability it went to Mr. Holway and Mr. McFarland, because they were the three associated.

Q. Why would you have sent it to Mr. McFarland as a manufacturer?

A. Because he was the original one on the committee, that is, he—not on the committee—there was no committee, that is a wrong statement, but Mr. Holway and myself represented the National Association, to see if we couldn't do something about trucking. We asked Mr. McFarland if he would meet with us, and discuss this item of trucking, and since he was—since he agreed to do that, then he was kept informed by carbon copy of all letters received from me and sent to the Cleveland office, at my instructions.

Q. I believe you testified that the reason you had contacted him was because of his being president of the Cement Association?

A. President of the Cement Association, yes.

Q. Now, coming to this Commission's Exhibit 10974 1043-Q and 1043-S, to which Mr. Leisure when he made reference also mentioned the list of the railway officials to whom those letters were to be sent—will you please state who furnished you, if you can, with a list to whom that was to be sent?

A. I don't think anyone did. I think we took it from the four or five big railroads. That is, we found—on the originals—in the first place, in the inception of the Act we got the timetables, and took the names of the presidents of all of them.

Q. That is the way the list was furnished to you?

A. That is the way the list was made, no one person furnished us with a list of manufacturers or dealers or railroads.

Q. Well, now, in the light of the testimony that you have given that the list was furnished to you, can you state who took that out of the timetables and furnished it to you?

A. In all probability, George Murray, my secretary, for he was handling it, he would get hold of timetables.

Q. You do not recall whether Mr. McFarland—

A. No.

Q. —aided in that work?

A. No, he didn't; that came out of my own office.

Q. Now, Mr. Leisure, in making reference to Commission's Exhibits, for identification, 1488, 1487 and 1486, questioned you on the point of your having sent 10975 those to your Cleveland office. I believe, however, in your answer to him, you stated that they were not only sent to your Cleveland office but you also had

copies of those sent to Mr. McFarland and the other interested parties; is that correct?

A. Yes, sir.

Q. That is, the other parties that were interested with you—

A. To the best of my recollection, so that anyone would be in touch with just what was going on from all angles.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Any further questions?

Mr. Leisure: Yes.

Cross-Examination by Mr. Leisure.

Q. Mr. Campbell, do you know who the other interested parties were that you sent these to? I am just trying to find out who you—

A. We selected the five big railroads, Mr. Leisure, the New York Central, the Pennsylvania, the Baltimore and Ohio, and the Erie, and I do not recall whether it was the Chesapeake and Ohio, or whether or not—it seems to me that they were five that we had selected out as being the big railroads that were interested in—because cement was hauled on the railroads—that permeated—that is, the cement fields where the factories were. That was done in our own office in Cleveland.

10976 Q. Are those the people you have reference to as sending the correspondence to?

A. Yes.

Q. As sending the correspondence to the interested parties?

A. Yes.

Q. Now, Mr. MacIntyre asked you if you sent these things to Mr. McFarland because he was a member of the Institute, and you answered that you sent them to him because he was a member of the committee, and then you said that was a mistake, that you sent them to Mr. McFarland because he agreed to meet with you—

A. Mr.—

Q. And later Mr. MacIntyre went ahead and brought up the question of the presidency of the Cement Institute again. Now, will you tell us, so we will have the record straight, did you send these copies to Mr. McFarland because he agreed to meet with you, or did you send them to him because he was president of the Institute?

A. We sent them because he had agreed to meet with us, and we originally asked him because he was president of the Cement Institute.

Q. You asked him to meet with you because he was president—

A. Because he was president of the Cement Institute, and then after that he became Mr. McFarland to us, because he was just one of the three representing ourselves and the manufacturers and the others represented the railroads' side, the three parties interested.

10977

Trial Examiner Norwood: Sign this, Mr. Campbell.

(Witness signs voucher.)

Mr. MacIntyre: If Your Honor please, there was one further document that I would like to see if Mr. Campbell can aid us in the identification of before he leaves.

Trial Examiner Norwood: All right.

Mr. MacIntyre: There is just one document.

Trial Examiner Norwood: All right.

Mr. MacIntyre: If you do not mind.

Trial Examiner Norwood: Resume the examination for just that one point.

Redirect Examination by Mr. MacIntyre.

The witness was shown a document marked for identification as Com. Ex. 1478, and asked to state whether or not he can recognize the signature at the bottom of that document as that of Mr. Ed. Holway. The witness said he does not know his signature. The witness has had correspondence with him very few times, and he does not remember his signature because most of the time his signatures are signed by his girl.

10978

10979 G. M. HARPER, called as a witness on behalf of
10980 the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am file clerk in the office of the president of the Chesapeake & Ohio Railway and have been so occupied since August, 1929. It was the office of Mr. J. J. Burnet during his life time, but it is now the office of Mr. J. D. Brooke. Mr. Burnet has passed away.

Q. You had a subpoena to produce a document from Mr. Bernet's files, or the files of the Chesapeake & Ohio Railway, did you?

A. Yes, sir.

Q. Did you produce that document?

A. No, sir; I was unable to locate it,—the letter referred to.

10981 Q. Have you made a diligent search in the files of the office for that letter?

A. Yes, sir.

Q. Do you feel that there is any possibility of locating it in the files of the company, or elsewhere?

A. I do not think so. I handled all the filing at the time.

10982 Q. Do you know any other place that you can search for it with the possibility of locating it?

A. No, sir; I did not.

10983 Cleveland, Ohio,
November 16, 1938.

10984 F. C. McKEE, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

10985 *Direct Examination by Mr. MacIntyre.*

I am vice-president and sales manager of the West Penn Cement Company. I have been vice-president since the organization of the company in 1926 and sales manager since February 1928.

Q. Did you receive a subpoena for the production of documents here this morning, Mr. McKee?

A. Yes.

Q. Did you bring the documents?

A. No, I did not bring the documents. When I received the subpoena, I was in the Pittsburgh office, and I
10986 asked the Butler office to have the files searched, which they did, and they couldn't find them. Now, we don't regularly keep the files that long; we take them out of our office, and what there is of them is left in a junk room along with other papers that we don't attempt to keep. And I don't know what might have happened to it,

but it wasn't in the file. We also went over our Pittsburgh files at the same time.

Q. You and the people under you, that is, under your supervision, were searching for a letter such as was described in the subpoena?

A. Yes, sir.

Q. And you were unable to locate it in the files?

A. That is right.

Trial Examiner Norwood: This letter is described in the subpoena as follows:

"Original letter from L. I. MacQueen, Executive Manager, Pittsburgh Builders' Supply Club, Pittsburgh, Pa., to Fred C. McKee, West Penn Cement Company, Butler, Pa., with two pages of enclosures, dated August 17, 1931."

By Mr. MacIntyre:

Q. Mr. McKee, I show you documents which have been marked as Commission's Exhibits 1043-RR, SS, and TT, and ask you to state whether or not you recognize those documents, and, if so, as what?

10987 A. I don't recognize the documents specifically. I do recall, in a general way, that about that time some of the dealers were desirous of purchasing their cement in carload lots, as the letter states in the first paragraph, but I do not recall this specific letter, or a great deal about that, on account of the length of time that elapsed.

Q. Do you recall whether or not you did have correspondence on or about that date, that is, August 17, 1931, with Mr. L. R. MacQueen, executive manager of the Pittsburgh Builders Supply Company, concerning the desire of dealers in his organization to purchase cement in carload lots as against truck lots?

A. I know there was correspondence on that—on that matter, but I can't remember specifically either this letter or the details of that correspondence.

Q. That is, he had correspondence in which he expressed desires such as expressed in that letter?

A. That's my recollection, yes.

Q. That is, he expressed that on behalf of the members of his club, did he—that is, he expressed the desires on behalf of the members of his club?

A. Well, that, in this case, this letter here is signed by him as executive manager, Pittsburgh Builders Supply Company.

Q. Well, do you know of your own knowledge
10988 whether or not that in his club, as represented by him, were such members as George Lanz, George Lanz and Son, Pittsburgh?

A. Yes, it is my recollection that they were.

Q. McCrady-Rodgers Company, Pittsburgh.

A. Yes, that I also recollect; M-c-C-r-a-d-y-R-o-d-g-e-r-s.

Q. They are about the largest dealers in Pittsburgh, are they not?

A. Yes, I believe so.

Q. Do you recall whether or not that at the same time there were such dealers as Joseph Criley, Butler, Pennsylvania, who did not express the same desires to have trucking of cement discontinued?

A. Well, I know there was—there was a Joseph Criley in Butler; what he may or may not have expressed, I don't know.

10989 Q. Do you recall whether or not he made application to you for deliveries of cement in trucks as against carload lots—

A. Now—

Q. —from your mill?

A. He made application to us for sale of cement and for—and we did not care to sell him.

Q. By truck delivery?

A. It is possible by—I don't recall whether by truck or by rail, but I know that we did not sell him at any time.

Q. Did Mr. MacQueen ask you not to sell him?

A. No, no—well, now, wait a minute—I can't say that they definitely—I doubt if he asked us not to sell him, very much, because we did—my guess is, as near as anyone could recollect, that probably Criley asked us to sell him cement and we refused him before the question might ever have come to MacQueen's attention, because Criley was local in Butler, a local man,—I don't believe that—

Q. That is, you refused to sell him because he was a local man in Butler, Pa.?

A. No, no, no—not for that reason—we refused to sell him on two bases.

Q. What are they?

A. One was his financial responsibility; the other was this fact, that when we select a dealer, somewhat in the

nature of selecting a cement salesman, if we allow
10990 a half a dozen salesmen to follow the same prospects, none of them will do a job. The same thing applies to dealers. If we have too many people handling our product at any point, nobody will make a determined effort to push it. Everybody's business is nobody's business.

The sale of cement is not a single transaction. Just because a salesman would come into our office and present us for an order for a car of cement, and say "I want to be your salesman," we wouldn't take him on. We would want to inquire as to whether this man was going to make a satisfactory permanent representative of us in the territory, whether this man was in position to do an adequate promotional pob.

We did not feel that Criley was; therefore, we didn't sell him as we were selling other people in Butler.

Q. Now, Mr. McKee, on this question of Mr. Criley's financial status, can you state whether or not Mr. Criley placed orders with you which were accompanied by cash for the cement?

A. I don't recall that. He might have done it.

10991 Q. Well, in that case, would you consider that his financial status was in question in connection with the sale of cement to him by you?

A. Well, the fact that a man can raise money for one car of cement is no indication that his financial status is such that you would want to have a continuing relation with him, or that he was of sufficient financial worth that he would make an adequate representative for you in the territory. We many times are—the credit losses of anyone in the industry are due to the fact that you sell somebody who pays for a car or two and later develops financial irresponsibility, and from all that we knew of Criley, which, I believe, is borne out by subsequent history of him, we believe that we were quite justified from that basis alone.

Q. Would there be any possibility of any financial loss on your part if he accompanied each order that he submitted to you with the cash for the order?

A. Well, in addition to that, in addition to that problem—

Trial Examiner Norwood: Answer the question directly.

Mr. Leisure: I would like to object to that question. We are getting pretty far afield. It is arguing with the witness. Whether or not he would or would not lose
10992 if the man accompanied each order with the cash, there is nothing in the record so far to show that he did accompany any order with cash, and I think the witness has explained very thoroughly what it would mean if he did.

Mr. MacIntyre: If you Honor please, we are prepared to show that he did accompany the orders that he did submit, after refusal to carry him otherwise, with cash, and the question arises as to whether or not if he did not continue to do so whether they would have continued to refuse to sell him.

10993 Mr. Leisure: That evidence should appear first, it seems to me.

Trial Examiner Norwood: The objection is overruled. This question goes directly to this witness' explanation. Read the previous question.

The Witness: May I have the question again so I can answer it?

(Question read.)

A. There would be this possibility, which has happened. You start to do business with a man, even if he is accompanying the order with cash, when some responsible officer is out of the office. An order may be placed without cash, and some one will carelessly look up the fact that he has been shipped before and think his credit is satisfactory, see nothing on the books, and ship him, and entail a loss. That has happened with other people we have sold.

Trial Examiner Norwood: Do not the books show whether the man was shipped C. O. D. or for cash or on terms and show what the terms are?

The Witness: Other than if they would check back as to the dates of deposit, and that isn't always done. For example, we have to keep open Saturday afternoons. There are usually maybe just a girl and one man, maybe just a girl there. She hasn't that time access to
10994 the books of account, the cash records. All she has is the record of who has been shipped, and she could quite easily be involved in a shipment to such an irresponsible party, and by Monday morning the car would be delivered and unloaded before we could catch it.

By Mr. MacIntyre:

Q. You didn't devise any way in your organization of overcoming such difficulties as to keeping books as to who would be sold on a cash or a credit basis, Mr. McKee?

A. No, because that is, I should say, not with any reasonable degree of effort or system, because this problem occurs: A man might submit a check, which might be accepted and in one or two cases found to be good and then found to be N.S.F. And that is another complication.

10995 Q. Mr. McKee, won't you state whether or not it is a fact that you do sell some of the organized dealers of the Pittsburgh Builders Supply Club, who are listed in Commission's Exhibit 1043-SS, on a cash basis and will refuse to sell them on a credit basis, just such as you did Mr. Criley, but you do nevertheless sell him?

Mr. Leisure: I object to that question. There are three questions in one, and I would like to have the question separated, and the witness be asked to answer the question separately.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: The objection is overruled.

Mr. Leisure: Your Honor, do you mean you want him to answer all three questions at one time?

Trial Examiner Norwood: I do not consider that is three; that is just one question. It states a number of conditions in the same question there, and if there are any—

The Witness: You mean on a cash basis?

Mr. MacIntyre: Yes, exactly.

A. I do not recall any dealers in this list that you refer to that are being sold on a cash basis. I do recall situations where when an account is owed us, we ask a dealer to try to keep his account—that is, rather, prevent his account growing much larger, but it may fluc-

10996 tuate up and down; it is not a cash basis. The mere fact that—there is no one on that list, I am positive, that is in the position of tendering a check before shipment who owes us no money.

Q. You can recall whether or not they have become delinquent in their accounts, and have never paid you—that is, as to some of those dealers?

Will you look over this list? And you refuse to sell them, except on a cash basis subsequently?

Mr. Leisure: Now, I object to this arguing with the witness. There are again three questions there in one question that he has asked the witness to answer, and I object to the question.

10997 Trial Examiner Norwood: I think he stated a number of conditions there. Now, if there is any one dealer that conforms to all those conditions, why, he can state that.

I consider that a single question.

A. I believe that in the case of the East Liberty Coal & Supply Company, they owed us some money. We stopped shipments and we finally collected the account before they went bankrupt.

Now, there are certain dealers on this list that owe us some money today.

By Mr. MacIntyre:

Q. And that dealer's name appears—the name of the Liberty Coal & Supply Company appears in that list, does it not?

A. Yes, that is the third one here, the East Liberty Coal & Supply Company.

Q. Since they have gone into bankruptcy, would you sell them on any otehr basis than cash?

A. No, they are out of business entirely.

Q. The men who operated the Liberty Coal & Supply Company, would you sell them on any other basis than the basis of cash?

Mr. Leisure: I object to whether he would—what he would do with respect to them does not come within any of the issues in this case, and I object to the ques-

10998 tion.

Trial Examiner Norwood: Read the question.

(Last question read by Reporter.)

Trial Examiner Norwood: The objection is overruled.

A. I don't think we would after our previous experience.

By Mr. MacIntyre:

Q. Mr. McKee, I will ask you whether or not that you have outside of this list of the Pittsburgh Builders' Supply Club membership, any dealers who are sold on any other than a cash basis?

Mr. Leisure: How?

By Mr. MacIntyre:

Q. That is, who are sold on a cash basis as against any other method of sale?

Mr. Leisure: I want to object to that question as incompetent, irrelevant, and immaterial, not coming within any of the issues of the complaint. There is no charge in the complaint that we boycotted any dealers.

Trial Examiner Norwood: The objection is overruled.

A. To the best of my knowledge and belief, no.

By Mr. MacIntyre:

Q. You have no customer who, today, is sold only on a cash basis?

10999 A. No, I don't—I don't recall any.

A. Q. Well, would you say that you have no such customer?

A. As nearly as I can recall three to four hundred accounts, I would make that positive statement.

Q. That you have no customers you sell only on a cash basis?

A. No, I don't—I don't believe we have.

Q. All right.

Was that true during the depression years, in 1931, and '32 and '33?

Mr. Leisure: May I have the same objection to this entire line of testimony, Your Honor, as being entirely incompetent, irrelevant, and immaterial, and not within any of the issues in the complaint?

May I have that objection to this entire line of questioning?

Trial Examiner Norwood: Certainly; yes.

The objection is overruled. This goes to his explanation of refusing to ship the one dealer there, and I think Counsel for the Commission has a right—

A. I don't wish—

Trial Examiner Norwood: —to bring it out.

Mr. Leisure: And, of course, that is not within the issues of the complaint. He might have refused to ship to all of the dealers.

11000 Trial Examiner Norwood: Yes.

Mr. Leisure: And there is no charge of boycotting dealers in this complaint, and the fact that he answered one question without objection would not allow him to continue along that line if it is erroneous, in my opinion, and I object to this entire line.

Trial Examiner Norwood: I cannot agree with Counsel.

Proceed. Is there a question pending?

A. I do not recall any such.

By Mr. MacIntyre:

Q. Are you willing to state definitely for the record at this time that you did not, during 1931, '32, anad '33, at the time Mr. Criley was attempting to buy from you on a cash basis, sell all of your customers on a credit basis and none on a cash basis?

A. I believe that to be the case, but I cannot make a positive statement on transactions that long ago.

Q. That is, you do not—

A. —we have too many of them.

Q. You do not recall?

A. I do not recall.

11001 The witness identified Com. Ex. 549 KKKK as apparently a copy of a letter dated February 15, 1931, apparently from himself as vice president of West Penn Cement, to George Murray, Executive Secretary of the Ohio Builders' Supply Association, Columbus.

Q. Do you recall having other correspondence with Mr. Murray as of about that period concerning the matter that is discussed in that letter?

A. Yes, I do recall that we had from time to time made inquiries as to builders supply dealers, from Mr. Murray.

Q. That is, asking him for lists of recognized—

A. Yes.

Q. —building supply dealers?

Mr. Leisure: Just a moment, now.

I object to that, now asking him questions as to what he said in former correspondence, the correspondence not being designated, or the dates given, does not show that it is in evidence.

11002 Trial Examiner Norwood: Read the question.

(The record was read, as follows: "Question: Do you recall having other correspondence with Mr. Murray as of about that period concerning the matter that is discussed in that letter?

"Answer: Yes, I do recall that we had from time to time made inquiries as to builders supply dealers from Mr. Murray.

"Question: That is, asking him for lists of recognized—

"Answer: Yes.
"Question: —building supply dealers?")
Trial Examiner Norwood: The objection is overruled.
A. I said "Yes."

11003 By Mr. MacIntyre:

Q. (Showing paper to witness) I now show you a document marked as Commission's Exhibit 549-4L, and ask you to state whether or not you recognize that, and, if so, as what?

A. Yes, that is a letter signed by me to Murray on the 19th of February, 1935.

Q. The note at the bottom is what?

A. The note reads:

"Dear Sir: Conneaut, Ohio, is in Mr. B. E. Reed's territory. He may be able to give you this information. His office is 1514 Builders Exchange Building, Cleveland Ohio."

Signed by "H. Campbell."

Q. Did you receive that in reply to the letter that you stated was from you to Mr. Murray?

A. Apparently so; it is written right on the bottom of the letter.

Q. He is returning you his original letter with it?

A. Yes.

Q. Do you know the Mr. B. E. Reed woh is referred to therein?

A. Yes.

Q. Who is he?

A. Mr. B. E. Reed, at the present time, I think, is connected with the Goff-Kirby Company of Cleveland,
11004 builders' supply people.

Q. What was his position at the time of this letter, to your knowledge?

A. I don't know his exact title, or—but he had a connection with the dealers in this Northeastern Ohio territory, as nearly as I remember.

11005 Q. What kind of a connection with the dealers?

A. Well, as I say, I don't remember exactly what his title was or what the name of the organization was.

Q. Was it a trade association of dealers?

A. Something of that nature.

Q. You can't recall whether it was the Building Material Men's Welfare Association of Cleveland, Ohio?

A. I don't recall any—I don't recall any such name as "Welfare Association." It would probably have something to do with building supplies; probably the words "Building Supplies" was in the title. It had a definite organization title.

Q. But did we understand you to say that you knew it as an association of building supply dealers here in northern Ohio?

A. He had, as I recall, some connections with various dealers up in this group, and was familiar with the dealers in this territory.

Q. Now, did you know Mr. Murray, George C. Murray, to whom you addressed this letter, Exhibit 549-LLLL?

A. Yes, sir.

Q. Who was he?

A. Executive secretary of the Ohio Builders Supply Association.

Q. At what address?

11006. A. Suite 990, Neale House, Columbus, Ohio.

Q. I now show you a document marked as Commission's Exhibit 549-UUUU, and ask you to state whether or not you recognize that, and, if so, as what?

Mr. Leisure: Is that in evidence?

Mr. MacIntyre: It is.

Mr. Withrow: What is the date?

A. Well, now, this is apparently a letter from Ohio Builders Supply Association signed with the initials "G. C. M.," which is evidently George C. Murray, executive secretary, addressed to me at Butler, August 19, 1935.

Q. Did you receive letters such as that one in reply to others that you had written to Mr. George C. Murray, executive secretary, of the Ohio Builders Association, Columbus, Ohio?

A. Yes, I presume I did.

Q. Will you state whether or not that is, to your knowledge, a reply to Commission's Exhibit 549-TTTT?

A. The letter states in the first sentence: "This will acknewlodge your letters of August 14" of which the copy here is marked Commission's Exhibit 549-TTTT.

11007 Q. Well, do you recognize Exhibit 549-4T as your letter to Mr. Murray, to which Exhibit 549-4U is a reply?

A. It apparently is. Of course, Mr. Murray's letter makes the statement: "This will acknowledge your letters of August 14," plural, so that there is a little ambiguity there as to what—

Q. Did you also write Mr. Murray more than one letter in one day?

A. No, I don't suppose I did. That is rather unusual to anyone, and I don't have any other—any recollection of what the other letter might have been about, what it was.

Q. Mr. McKee, I will ask you whether or not during 1932 and 1933, the Rennecamp Supply Company of McKees Rocks made application to you for delivery of cement by truck from your plant or application for you to permit them to truck the cement to their supply houses from your plant at Butler, Pa.?

A. I don't believe they did, because it would be very much to their disadvantage to truck from our plant.

Q. What about trucking to job sites? Did they make application to you for permission to use their trucks or trucks of others to truck cement from your plant to job sites?

A. I don't believe they did, because I can't tell you exactly where their plant is located, but it is somewhere back of McKees Rocks or the west end of Pittsburgh.

I have never seen the place. And they would be
11008 closer to Green Bag or Universal Cement Company by probably 30 miles than they would be to our plant, and, hence, I can't see why they would ever come to us and ask for it.

Q. That may be true as to their warehouses, but what about job sites as to jobs that they would have nearer Butler than McKees Rocks?

A. I don't recall any such job or request.

Q. You just do not recall at this time the application?

A. I do not, and I think it is very doubtful that they made any such request.

Q. What about Swartzmeir-Kress Supply Company of Pittsburgh? Do you recall applications from them for your permission to truck cement from your plant into Pittsburgh?

A. No, I don't think they ever did.

Q. Or to job sites on which they had sold cement?

A. No, I don't think they did.
Q. You do not recall at this time?
A. I do not recall.
Q. Mr. McKee, I will ask you whether or not you, as sales manager, have not directed people under your supervision in the organization of the West Penn Cement Company to send out quotations to dealers protecting dealers and other customers as to the prices over some specified periods on proposed specific job contracts?
11009 A. Why, if a job comes up for bids, we will quote for the account of John Smith, dealer, at a certain carload price, and if the contractor is successful in securing building, will make a contract with the dealer, and he, in turn, will make a contract with the contractor protecting him at that price for the life of the job; otherwise, the contractor couldn't make a bid.
Q. Do you know, when you cover a dealer or other customer with such protection, that you are going to get an order from him for the cement that is expected to be used on the proposed specific jobs?
A. No, because any one of a dozen competitors may get that order.
Q. Over what period of time do you commit yourself under the quotations that you submit to the dealers and other customers for their protection?
11010 A. For the life of the construction of the job, not to exceed one year, except in a few rare cases of large Government construction projects, such as dams, where the construction period is necessarily longer.
Q. Than one year?
A. Than one year. And those cases where that has been longer than one year, you could count on the fingers of a hand.
Q. Are there instances where you have given such protection, price protection to dealers in your bids, dealers and other customers, where the amount of cement that was expected to be used was merely estimated; that is, you didn't know the exact barrelage that would be required?
A. Well—
Mr. Leisure: I think—just a minute—there should be some explanation of what is meant by this protection. The witness hasn't said that he gave anyone protection. He has said that he has explained the method by which

he issued quotations. Now, if Mr. MacIntyre means that issuing a quotation is protection, then, that is one thing; but I think we should have some understanding as to what he means when he says: "When you issue this protection". The witness has not said he issued any protection.

Trial Examiner Norwood: Counsel can bring
11011 that out.

By Mr. MacIntyre:

Q. I will be glad to ask Mr. McKee whether or not after he has issued the price quotations to dealers or other customers, it does result in price protection, that is, against advances on behalf of the purchases for the specified period covered in the quotation.

A. It means that that is somewhat leading. We don't issue—

11012 Trial Examiner Norwood: Well, don't concern yourself about whether or not it is leading. I will pass on that.

The Witness: All right.

A. We issue a quotation to a contractor so that he is in position to safely bid on a construction job at a specific price. And if he gets the job we have to contract with him for the period of the job; otherwise, if there was a change in price, he would suffer a loss.

By Mr. MacIntyre:

Q. It is in the nature of a price protection for the period specified, then, is it?

A. He is only protected on the cement required for the specific job if he receives a contract for it.

Q. Well, that is what I meant by the word "protection" a few moments ago. I am glad that you explained it.

Now, as to the amount of cement required on the jobs, do you in all cases know the exact barrellage that will be required on the job or proposed job on which you protect the prospective customer, or is it sometimes in the form of an estimate, engineer's estimate?

A. Well, of course, it can't be reduced to the last barrel, but it is a very close estimate of the amount that will be used.

Q. Probably about the best that an engineer could make, would you say?

11013 A. I would say so, yes.

S. T. CRAPO, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I devote most of my time to the Huron Cement Company, of which I am vice-president and secretary.

Q. Are there some particular phases or aspects of the company's business to which you devote your official attention as such an officer?

A. Well, I should say that most of my time was used in discovering where cement was sold too cheap.

11014 Q. Well, are you in charge of sales?

A. No, sir.

Q. You have a sales manager?

A. We have a sales manager.

Q. Who is he?

A. Rooney, A. J. Rooney.

Q. Is he under you?

A. No, I don't hardly—of course, he is sales manager. As I understand, he is not an executive. Perhaps to make it a little clearer, the Huron Cement is very closely owned. It started in 1907, and it is practically owned by four people, five people, of which I am one of the smaller ones, but substantial. They are all close together. I should say the management rested in the ownership group.

Q. Do other officials of the company have supervision over the sales manager, or is it yourself that does that?

A. I think it is the directors.

Q. Yes. In general, I suppose, that is true of all officials, isn't it, that the directors have supervision over them?

A. The sales manager does not come into me, if you want to know that. He doesn't bring his troubles to me.

Q. You look into his troubles, though, whether he brings them to you or not?

A. Well, I think I am more of his conscience than anything else, to bring back the things that I think

11015 he might have done better somewhere else.

Q. Well, you look into his affairs?

A. Yes, I look into them.

Q. You look into his business?

A. I look into his results, sales results, and manufacturing results.

Q. All right.

How long have you been an official of the Huron Company?

A. Why, ever since it started.

Q. In 1907?

A. In 1907, the first secretary and treasurer.

Q. Where are the mill or mills of the Huron Company located?

A. They have only one mill at Alpena, Mich.

Q. Will you give us a little of the history of how that mill came into being, how you entered the cement
11016 business?

A. The Michigan Alkali Company has a quarry up there, and they use the stone, and they can only use what they call the flux stone, the larger lumps, and the Huron Cement Company was created to use the fines, about—well, it is a little less than 50% of the fines. They wanted to do something to keep the quarry from getting buried.

Q. Is the Huron Company a subsidiary of the Michigan Alkali Company?

A. No; it is a separate company.

Q. Is it the same interests—

A. No.

Q. —prominent in each company?

A. The major interest is people in the Michigan Alkali Company, and the minority interest, in a way, are the few outsiders that went in with them.

Q. The major interests in the cement company—

A. Are the Michigan Alkali.

Q. —are the Michigan Alkali?

A. That is the personnel, that is, J. B. Ford, and E. L. Ford.

Q. Are there any relationships between the Fords you name and the automobile Ford people?

A. No—far from it.

Q. And what territory did the Huron Company first undertake to find an outlet for its cement in?

11017 A. Well, the Huron Company started quite small, and then of course—the territory it sought was nearby.

Q. You mean in lower Michigan?

A. Lower Michigan, yes, and it was—and it would go over the Straits a little, but then we were forced to make—build bigger, because, in the beginning, it was out of balance. I mean, in a way, we had to bring the weak spots up to the other, and we got a much heavier production.

Q. What is that?

A. That forced us to water.

Q. In lower Michigan were your principal consuming markets such places as Detroit, at that time, would you say?

A. Well, the heavy business in Michigan in the lower Peninsula is further south, and then it gets lighter, and then it gets up to Alpena, and it was pretty—pretty thin country. We had quite a ways to go.

Q. Before I pass that point—what is the capacity of your Alpena plant?

A. Well, in that latitude—I mean, in a way, in order to make this a little clearer, if you run a mill 365 days during the year, you only ship about half that—

Q. Well—

A. —the result is that our kilns are the ones that are running steady; the kilns are good for about 12,000 barrels a day.

11018 Q. What I am getting at is, of course, not the theoretical capacity, but what over a course of some time you find to be the actual capacity.

Mr. Zimmerman: You mean output?

Trial Examiner Norwood: Maximum capacity?

Mr. Wooden: No, I would say capacity—

Mr. Zimmerman: You mean the mill capacity, not the sales?

Mr. Wooden: Yes, mill capacity.

A. I think in one year, I think it is a fair one, I would say 4,000,000 barrels during a year.

By Mr. Wooden:

Q. What year was that?

A. That I couldn't remember, that far back, when it was good, but, then, in that case the sales and the mill, don't you see, were driven pretty steadily.

Q. Could you say about when that was? Was it prior to the depression?

A. Oh, yes, I should say 1927, maybe, or 1928.
Q. All right.
A. It was when everybody was crazy.
Q. Over the last eight years, say, since 1930?
A. Well, now, it is down very materially.
Q. What has been the proportion of your actual output to your capacity?
11019 A. Well, I think it dropped down to 25%.
Q. You mean during the low part of the depression?
A. Yes—well, the cement doesn't move right along with the stock market, I mean, in a way.
Q. Yes.
A. I mean during the low cement depression.
Q. When was that?
A. Well, I couldn't—
Q. 1932 or 1931?
A. I would have to look at the book on that, it is just—
Q. Well—
A. But some years it was bad, I guess all over it was low, very low.
Q. During the last eight years, what has been the highest proportion of your output to your capacity?
A. Well, I think over 50%, I could get those figures exactly for you, if you wanted them.
Q. Yes, I appreciate that.
A. Yes.
Q. But I think your general knowledge of the business is perhaps sufficient—
A. Yes.
Q. —to enable you to make a dependable estimate, and that is all it is, of course.
A. Yes, it was under 50 at present.
11020 Q. When you started out in 1907 did you ship cement into the interior of Michigan on rail?
A. Yes, we—
Q. Was there at that time a Wyandotte base?
A. Well, the Wyandotte mill—and that's the way that the Huron people—the Wyandotte mill was leased by the people that are now in Huron, but it is now run by Michigan Alkali, and the Huron sells the Wyandotte products.
Q. And that has been true for how long?
A. Well, of course, that started back—when the Wyandotte mill—that is, when we were operating it, the Wyan-

dotte Company, why, the price in Detroit was Buffington plus the "freight" rate at Detroit, which, as I recollect, was 42 cents, that was a good rate.

Q. When you said the Buffington—

A. That is the—

Q. —Buffington plus, you mean the Buffington base price plus?

A. Yes, the Buffington had a base price, and then you—the delivered price was 42 cents, and that's what we were able to collect.

Q. You mean the 42 cents was the freight?

A. 42 cents was freight.

11021 Q. From Buffington to Detroit?

A. From Buffington to Detroit, yes.

Q. And in selling in Detroit, did the Huron Company—of these rates, what were you able to collect in Detroit?

A. Well, that was the big supply—I mean, that was the general—that was the general basis that we could get for our product, it was high.

Q. And that was your policy to charge—

A. Well, we—

Q. —the Buffington plus in Detroit?

A. We didn't have—that's what we were—in order to—Buffington, and even Atlas—way back in there, that was their price. Now, we couldn't get any more than that. Now, there was no basis, I mean, and I think this is true of the other—of other mills—the base didn't come—and to take the financial part, we thought it pretty well protected because there was raw material in Detroit; there is no fit limestone in Michigan, the light marl mills, they get that out, but then there was artificial, the Peerless gets its limestone from Northern Michigan, by boat, sold to them by the United States Steel. The Ford Company makes cement—Ford Motor Company makes cement out of slag, the lump—

Q. I want to ask you right there whether you ever sold the output of the Ford Motor Company—

A. No—yes, we sold it for quite a while.

11022 Q. What period of time?

A. Well, the dates are all out, and I can't remember those, but I think it is about 3 years ago, that there was a period there where the—where our company sold the Ford Motor, the Wyandotte and the Huron, all went through that one agency.

Q. About how long did the sale of the Ford Motor output cease?

A. Why, I think five or six years.

Q. Is that being sold by some other company now?

A. They took it away from us; it is being sold by a private concern in Detroit, John Mercier.

Q. Not by the cement manufacturers?

A. No, John Mercier. We didn't sell them.

Q. I understand that at that time you went into Detroit, the price at Detroit was Buffington base plus 42 cents?

A. Yes, that's my recollection of the freight rate.

Q. And that is the price, delivered price, that you observed when you went to Detroit?

A. Why, I don't—I couldn't say that we observed it, but that was the general base of the commodity. I would almost think that we—that we might have at that time slipped it a little, along there, but then that was changed, if I could answer the question where it was around—when this new cement-making materials came in, why, it forced a base at Wyandotte—

Q. I want to ask you—

11023 A. (Resumed) —don't you see? And that kept on until I think it is equal to Chicago.

Q. I want to develop the origin and history of that Wyandotte basis.

A. Yes.

Q. Can you tell us about when that was.

A. I could on the record, but I can't remember it. I can give you a history of it.

Q. Can you say whether it was prior to 19—or prior to the World War, let us say, if we can fix it that way in general.

A. Yes, I think it was.

Q. Way back in there prior to the World War?

A. Yes. And then I would volunteer, of all the mills in Chicago, the Huron and Wyandotte, it was sold, are the only ones that have a basis; the others have none.

Q. That Wyandotte base for quite a while was applicable only within the State of Michigan, was it not?

A. No, only in one instance, where—Michigan mills are rather quarrelsome, and we put a Wyandotte base in, and that's pretty close to the southern line, and we made it applicable to Michigan because it would run down into Ohio where we had no business. I mean it was not—

Q. You mean it would have run down into Ohio? You are unrestricted to Michigan?

11024 A. From Wyandotte, the base that we used in Michigan, if we hadn't stopped it at the Michigan line, it would have run over into—quite a ways down into Ohio.

Q. If you had not stopped at the Michigan line?

A. Yes, that's just that quotation.

Q. Yes.

A. But we were not doing any business down here.

Q. Yes.

A. And we didn't think we should presume to make a price down there.

Q. And was that the prevailing practice of the other Michigan mills to use the Wyandotté base only to the Michigan line?

A. Well, I don't know as they had any rule that that governed at all, but that was our publication, if they went low, why—I mean, that had no reference to that.

Q. That goes back about when, when you put in a Wyandotte base?

Mr. Smith: I think he said he could not remember, and suggested it was before the war.

A. I can't remember when the Wyandotte base went in, but I think that—where the base went down, and we cut it off on the southern line—I think it was since 1929, my impression; it might have been before.

By Mr. Wooden:

11025 Q. You mean that prior to 1929 that the Wyandotte base was allowed to run beyond the Michigan—the southern Michigan line?

A. Yes, but it was so high that it didn't run—

11026 Q. Mr. Crapo, you were telling us about how the Wyandotte base was limited to the State of Michigan. And in that general connection you mentioned the fact that at that time you did not sell into Ohio; is that right?

A. No, not—we went—we had very little—you see, Wyandotte is another by-product with a limited output.

Q. Yes.

A. And we get a better net by selling it nearer to home. So we didn't have any organization to get into Ohio, but—

Q. Even from your Alpena plant?

A. No, that was later, when we went to put a silo up there.

Q. I want to get that straight as a historical development.

A. Yes, that was a historical development.

Trial Examiner Norwood: Well, that is the case in any direction, isn't it, that you get a better net by selling nearer home?

The Witness: Why, if the cement people make a delivered price—

Trial Examiner Norwood: Yes.

The Witness: —why, then, that is one of the accounting troubles. How far can we ride on the railroad
11027 and not be beneficiaries to the railroad and not to ourselves.

By Mr. Wooden:

Q. You mean, how far you can ride on the railroad without having a net advantage to the loss point?

A. Until it gets on the other side.

Q. Yes. Well, what I was leading up to was to ask you this question: Whether or not the Wyandotte base was still limited to the State of Michigan after you got into the Ohio territory?

A. Well, the Toledo base blocks it out.

Q. Well—

Mr. Smith: May I interject there so we are clear? I am not sure but what Counsel when he says "limited" means limited by a statement as to its effect. When you use the word "limited" you appear to use it in the sense of inevitable result of price.

The Witness: Well, it is a geographical location.

Mr. Smith: Yes. That is the sense you use it in.

The Witness: You see, I am not answering the questions, and I don't want to talk too much, but for a long time Huron never had any bases outside. Finally, the Lehigh came along, for some reason or another, and they established bases at Buffalo and Cleveland.

11028 Q. How about Toledo?

A. Well, I don't—I would have to look at the rate and see when that came, but they first started and called it a port price.

Q. Yes.

A. I mean that was the general talk. Then finally I came out and made a clean sweep with it, and we have always continued it.

Q. What about the Toledo base? Who established that?

A. Well, I am rather inclined to think that we did.

Q. Was that after Lehigh had established so-called port bases at Buffalo and Cleveland?

A. Well, now, I would have to check that a little to find out. The establishment of the Lehigh method around in there was Colonel Young, not Joe Young, I mean it was around there. That was when the price went down to 95 cents in Cleveland.

Q. That was in 1931, was it?

A. I am rather inclined to think that is just about the time Colonel Young died.

Q. What was the approximate time that Huron enlarged its selling territory to take in those Ohio ports, lake ports?

A. Wyandotte is limited in output on account of its by-products, because there is only a certain amount that comes out of the alkali mill that can be turned into
11029 cement, and the output varies according to the alkali production. When it comes to Alpena, with the stone, it is much bigger, so that we have gradually worked up from 2500 barrels up to 12,000.

Q. Are you leading up now to tell us when the Huron enlarged its selling territory?

A. No. But we had to enlarge—

Q. That is what I asked.

A. We had to enlarge our selling territory as we had the production forced off on us. We first, as I remember it, around; anyhow, we first started into Cleveland and then to Duluth, and come down, and here the latest one we put in is at Muskegon.

Q. Well, about when did you start selling in the territory indicated by those towns you have named?

A. Well, let's see, 1907. I think I am right, that Cleveland was first. I should say it came around along in about seven or eight years after we started.

11030 Q. You mean along about 1915?

A. Yes. And, first, we used the ordinary boats, and then we had difficulty, and finally we built our own boats, and that necessitated the silos.

Q. At that time there was no Cleveland base; is that right?

A. I think not. I don't think it was for a long time.

Q. Was the price at Cleveland made up of some other base price plus rail freight to Cleveland?

A. Well, there never has been, in my opinion, any cement organization that made the bases. I mean, they didn't make it. But the same way, Detroit was in the early days, where it went back to Buffington plus the freight rate.

Q. That is what I am getting at as to Cleveland now.

A. Well, now, Cleveland—

Q. Where did it go back to in Cleveland?

A. I don't know from where that would come, but there has been some question; I mean, there has been a lot of unrest, that the last one that came to my mind was we ought to go back to Buffington.

Q. You mean for Cleveland?

A. Yes.

Q. Well, as to whether you ought to or not, what I am trying to find out is—

A. Well, we didn't.

11031 Q. When you entered the Cleveland market, was the Cleveland price made up of some base to the South or East plus freight to Cleveland?

A. Well, I think when we came in that the mills that were around here were Middletown and Bessemer—that is the Lion brand—and some others around.

Q. Did you ever know whether or not the Cleveland delivered price was made up of the Ironton base or a Buffalo rate plus freight?

A. Well, you have got to watch every day to see where a base comes from.

Q. Yes.

A. I wouldn't be surprised. But in the early days, I don't think I entered into it at all.

Q. How about Universal at Pittsburgh? Did that have anything to do with the Cleveland price?

A. Well, they were more recent. Yes, there was a period I think there where this country was governed by the Pittsburgh mills.

Q. The Universal base at Pittsburgh?

A. Well, there was another mill ahead of Universal, wasn't there? I think the Universal came in as a by-prod-

uct on the iron plants, but there were some others. I am a little foggy back on these to remember some of the individuals, but there wasn't any mill around Cleveland.

11032 There is no cement producing material in Cleveland.

Q. Mr. Crapo, you mentioned the movement or the desire on the part of some domestic Cleveland delivered price to base on Buffington plus freight. When did that movement arise?

11033 A. I think it arise—It came up about the time that we raised the 95 cent base at Cleveland.

Mr. Smith: May I again interject? I am sure counsel doesn't wish to incorrectly state Mr. Crapo's position. Mr. Crapo's testimony was that the Buffington—

Trial Examiner Norwood: Will counsel please stand if he is making a statement?

Mr. Smith: I beg your pardon. Mr. Crapo's suggestion was that the Buffington did one time control Cleveland.

The Witness: No; I don't want to say that.

Mr. MacIntyre: No.

Mr. Wooden: No; I think you misunderstood him.

Mr. Smith: What was the statement?

The Witness: I don't know. I only said that there was a suggestion that came, that Cleveland ought to be hooked up with Buffington.

Mr. Smith: Yes, that is right.

Mr. Wooden: I referred to it as a movement, and I will have Mr. Crapo enlarge on that.

The Witness: It is when they came up. To make it clearer, from the 95 cent price, which was the suicidal price for it, why, the Lehigh at that time had put in a Cleveland base.

11034 Q. Ninety-five cents?

A. No, I think that that—yes, I think, yes 95 cents. We will say that. I mean, that was recognized. And then it came— and then when they pushed it up, why, they suggested it ought to be computed from Buffington.

Q. Who suggested it?

A. Well, now, I have forgotten. That was—I rather think it was J. B. Johns.

Q. Of Medusa?

A. And I said, "Why mix it up? I have troubles enough to get Cleveland around without—I mean, without having something that I don't know over at Buffington, up or down that would"—

Q. Well, this time that you are referring to was probably the latter part of 1932, wasn't it, when the 95—
A. That must be the time, yes.
Q. Was that the time?
A. Yes, about 1932.
Q. The time the Cleveland base was raised?
A. Yes.
Q. When you said Mr. Johns, did you mean J. B. Johns?
A. J. B. Johns, I mean.
Q. Of Medusa?
A. But he is in Cleveland, though.
Q. Yes.
11035 A. And I happened to meet him somewhere.
Q. Now, do you mean his mill is in Cleveland?
A. No, his mills are at Bay Ridge, between here and Toledo, but their general offices are in Cleveland.
Q. To whom did Mr. Johns make that suggestion?
A. Why, that was in a talk with me.
Q. What did you have to do with raising the Cleveland price to a Buffington base plus? What would you have to do with that?
A. Well, I said that my answer tried to get around to Johns—said, "Why tie it up with Buffington? Why not let the Cleveland price be determined on its merits?
Q. Did Mr. Johns indicate to you or tell you he had taken it up with the Buffington people?
A. No, I don't think so.
Q. Or anyone else?
A. I think not. You must have a—my recollection with the business is that although it might not be around, but it might—I never got around any group that talked about bases, I mean, and fixed them outside it was the local people. The only way—
11036 Q. Yes. Well, now, Mr. Crapo, about when was it that Huron began to enter the Upper Lake markets, consuming markets, such as Duluth or Milwaukee?
A. Well, we started into Duluth first.
Q. First?
A. Well, I mean, that was the first market we got into, I think Cleveland was the first, and then we went up to Duluth and built the next one.
Q. Yes.
A. That must be back quite a ways.
Q. Before the World War?

A. Oh, yes. Oh, yes.

Q. You went west before you went east, then, on the lakes?

A. Well, we went to Cleveland, and then we went to Duluth.

Q. Did you get into Buffalo, too?

A. Yes, we are in Buffalo and Oswego.

Q. When did you get into Buffalo?

A. What?

Q. When did you get into Buffalo?

A. That is more recent.

Q. How recent?

A. Well, now, if I could ask the opposition over there, I think he has got all those figures right there on the desk, which, I mean, they are all well known, but

11037 I can't remember.

Q. Well, make any reference to your records that you care to to enable you to answer the questions.

A. Well, I will ask Mr. Smith if he can tell when we built those plants, those silos.

Trial Examiner Norwood: No, I don't think you had better do that. Just answer what questions you can, and those you can't tell us.

Mr. Wooden: Well, he is permitted, of course, to refer to any record of his company.

Trial Examiner Norwood: Oh, yes.

Mr. Wooden: That may be available.

Mr. Smith: I don't think I have that statement here.

The Witness: I am perfectly willing to furnish them as soon as I get back, if they want to save a little time. It is only a matter of—

11038 Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Smith: I haven't got the statement here, Mr. Wooden.

By Mr. Wooden:

Q. Can you tell me, Mr. Crapo, when Huron established its—now, let us see, that is getting the cart before the horse—

In these various lake ports where Huron has entered the markets, did it establish silos at those various places?

A. Well, the silo generally followed after we had got the volume.

Q. I see.

A. We used ordinary transportation.

Q. And just tell us, briefly, what the silo method of handling cement is.

A. We—when you have a boat that handles bulk cement, you have got to have a place to put it. I mean, that necessitated the silo, and in order to—it had to be a pretty good sized plant because, in order to keep the boat going, why, you had to have enough room to put the load in.

Q. How large boat loads of cement have you been accustomed to ship to those silos?

A. Well, if there is water enough we have—with our biggest boat we would—right close to 50,000 barrels.

11039 Q. And from the silos is the cement sacked—

A. Sacked at those places.

Q. —and loaded onto cars?

A. Cars or trucks.

Q. What methods would your company—has it followed—in loading its boats, and the unloading of its boats?

A. Well, it—at the mill—why, we have a boat bin that we—rather high—and that we run it with screws into the boats.

Q. By gravity?

A. No, that's done at—Lehigh does that at Buffalo.

Q. And in unloading at the silos is something similar followed?

A. Well, in the same way, we take that, of course, it is smaller machines, and it goes into the packing machines.

Q. I mean, in unloading from the boat to the silo.

A. Oh—that's taken out either by pumps or by bucket elevators.

Q. Would you say that you have a very economical method of handling cement and delivering it to your silos at these various places?

A. Well, we think we have got a good boat—or good boats—we have got three of them.

Q. Do you believe that you have a substantially lower cost of transportation by that method than you would by rail?

A. To the long distant points.

11040 Q. Yes.

A. Yes.

Q. Such points as Milwaukee?

A. Yes.

Q. At Cleveland?
A. Milwaukee—
Q. Cleveland?
A. Of course we go—
Q. Or Buffalo?
A. Buffalo.
Q. Or Duluth?
A. Yes.

11041 Mr. Smith: Mr. Wooden, I have most of that information here now.

Mr. Wooden: I would be very glad to know the dates, of course.

Mr. Smith: I cannot give the Cleveland, Duluth, or Milwaukee dates. My information goes back to 1925; but Buffalo came in in 1928, the first shipment there.

Mr. Zimmerman: The establishment of silos.

Mr. Smith: No; the establishment of silos followed shortly after.

Toledo in 1930; Oswego in 1932; Saginaw in 1933, and Muskegon in 1934.

Those are the approximate dates.

By Mr. Wooden:

Q. I note from those dates, Mr. Crapo, that the Huron Company was evidently enlarging its business even during the depression, is that correct?

A. No, that—

Q. —enlarging the territory in which it did business, then?

A. Yes, we enlarged the territory.

Q. That is right.

A. Because there wasn't condensed business enough of our own.

11042 Q. Yes. In going into those new territories, did you observe the going prices that were then in effect at those territories, or did you slip them a little, as you said, in the case of Detroit?

A. Well, no, we observed them in—

Q. Did you observe them for the most part, would you say?

A. In order to make that a little clearer, we took the trucks over with us, the difference between the delivery on the job and the delivery on the railroad.

Q. You mean you coupled your silo distribution with truck delivery from the silo?

A. We have never attempted to get beyond a feasible truck area from our silos; I mean that is the general basis.

Q. Do you have a silo at Milwaukee?

A. Yes.

Q. Do you have a truck delivery from that silo?

A. Yes, we make daily—

Q. Within certain limits?

A. Of course, the truck is a little different, it becomes ridiculous, I mean, the delivery, if it is beyond the radius to which a truck can go—

Q. Do you have a—

A. —we have a little truck delivery from those places within a certain defined territory.

Q. Defined by county boundaries?

11043 A. Well, county boundaries, of course, the easiest to state, but sometimes the companies don't work right, it is largely—I mean, fundamentally, it is a radius boundary; if your truck is good for 40 miles, why —why, sometimes it—

11044 Q. Has not that radius method of determining truck delivery been criticized by various units in the industry?

A. What—but you see, frequently the trucks—

Q. Pardon me, you can explain that.

Trial Examiner Norwood: Answer the question as put.

A. It has been criticized, yes.

By Mr. Wooden:

Q. And has not there been, as a substitute for the radius method of so many miles, you might say, a specification of the territory by counties, or otherwise?

A. It is more, now, governed by the State laws.

Q. Well, I am—

A. I don't know how they get out.

Q. In your deliveries from Milwaukee, for instance, or into developed territory—

A. Yes.

Q. —have you not limited your truck delivery to certain specified counties?

A. At times we had a list of counties.

Q. In which truck delivery was made, and nowhere else; is that right?

A. Yes, and beyond which a truck would not go.

Q. Yes.

A. Just what it is now, I don't know.

11045 Q. So, as I understand it, you combined whatever economies there were in the delivery by boat to your silos—

A. Yes.

Q. —with the economies that—

A. That's right.

Q. —resulted from truck delivery from the silos; is that correct?

A. From the silos, yes.

Q. Can you say what the comparison is on a per-barrel basis between your cost of delivery by water into Milwaukee, and your cost of delivery there by rail?

A. No, I haven't got any figures on that.

Q. Well, you have got some general information that you can give an answer to that.

A. Well, I can't answer that.

Q. Can you not?

A. I would have to get the figures; I want to tell you, I think it is cheaper.

Q. Well, much cheaper, is it not?

A. Well, I—it varies, as you run one type of transportation, you run a truck against a railroad, 10 miles, it would be the same way by boat.

Q. They are both cheaper by boat?

A. Yes, but if it goes far enough it may not be.

Q. But you can go further by water than by rail?

11046 A. No, I think railroad is a better transportation facility than any boat.

Q. I mean, from the standpoint of cost. Can you not get to Duluth by water much cheaper than you can by rail?

A. I don't think so, by cost. We can by the railroad, interstate commerce rate.

Q. Well, do you mean comparing the rail rate—

A. Yes, the rail rate.

Q. —with your cost of boat transportation?

A. Or boat transportation.

Q. That you can get it cheaper?

A. Is much cheaper than the railroad rate.

Trial Examiner Norwood: The boat transportation is cheaper?

The Witness: Yes, than the railroad rate. I don't think that a boat—well, I am not asked a question, I won't—

Trial Examiner Norwood: Why do you distinguish? Do you get any of it lower than the rate on the railroad?

The Witness: Well, but we own our own boats.

Trial Examiner Norwood: I see.

Mr. Smith: You are thinking of the actual cost of the railroads as compared with the cost of the boats?

The Witness: That's what he came back on the

11047 railroad rate.

By Mr. Wooden:

Q. No, I am thinking of the cost to you as a shipper over the railroad.

A. Well, we don't use it. That's the only answer I would make. We use our own.

Q. You would use it if it were cheaper, would you not?

A. Why, I think—I think it is the duty of the cement company to put its product over the cheapest route possible.

Q. Yes.

Can you tell me what, in amount, would be your difference in cost of delivering cement into Buffalo by water, and by rail?

A. No.

Q. Is it much cheaper?

A. I don't know.

Q. How much of your delivery at these various silo points is made by rail?

Mr. Smith: You mean delivery to the silo?

Mr. Wooden: Yes.

A. I should say none.

By Mr. Wooden:

Q. In other words, it is all made by boat?

A. Except under emergency, all made by boat.

Q. Exactly. That is because you consider it the

11048 cheapest method of delivery, is it not?

A. Well, of course, it is shorter mileage, to begin with.

Q. As far as the cost to your company is concerned.

A. Yes, to our company we consider it, rightly or wrongly, that it is the cheapest way to get it to Oswego, and Duluth, and other points.

Q. Now, when you began to extend your business into this new territory where you have established silos, as I

understand it, you observed for the most part, or adopted for the most part, the prices that you found in effect in those markets?

A. Yes, sir.

Q. Did you find those prices delivered in those markets to assist you or work back to some base price, of some mill?

A. Well, I—a product mill sends its quotations all out.

Q. Yes, you can add that if you want, but can you please first answer my question.

A. Well, I will, but now you—

Q. Yes.

A. —by seeing those you designate the freight, then you find out—

Q. That's what I meant by working back to you.

A. Working back, yes.

Q. Yes.

A. We work back, that's right, and find that some
11049 product mill has made a very consistent price at its mill.

Q. Some basing-point mill?

A. Well, I think.

Q. You say a product mill.

A. I think that's the only definition of a basing point. I never—it is that similarity of price that you don't get any good from them except under the N. R. A., you take it by the price that they quote.

Q. You found, did you not, in your handling of these markets, that there were some mills dealing in those markets that were not basing-point mills?

A. Oh, I would think that the bulk of the cement mills are not basing-point mills.

Q. And you did not work the price back to known basing-point mills, but to some basing-point mills; is that correct?

A. I don't mean we worked it at all.

Q. I mean, you figured it back.

A. Figured it back.

Q. Figured it back, yes.

A. That's what we thought, that's what we were watching.

Q. Yes.

Did you find any opposition to your entrance into these new markets at the various lake ports? Have you enlarged your business during the depression years—that

is, enlarged your territory during the depression years or—

11050 Mr. Leisure: Just a moment. I think there should be some explanation of what "opposition" means. I suppose the witness is in a competitive field where he would always have opposition as to others trying to sell cement to the same customer, but I don't know whether that is what "opposition" means.

Mr. Wooden: Well, we will find out, perhaps, by pursuing a little further.

A. Well, if I could ask what were the recent depression mills or the silos that we built.

Mr. Smith: The last ones to come in were Saginaw and Oswego—the last two.

The Witness: And Muskegon.

Mr. Smith: Muskegon and Saginaw and Oswego.

A. Muskegon and Saginaw did not create any ripples, because we were all—but Oswego created quite a lot of comment.

By Mr. Wooden:

Q. Well, what kind of comment do you refer to, by whom?

A. Well, by the mills that were near by us.

Q. Well, did they make a comment to you?

A. Yes—well, not to me personally.

Q. Well, to your company?

A. The company, yes.

Q. Well, what was the comment?

Mr. Leisure: I object to that; it is plainly hearsay. I object to hearsay statements.

11051 Mr. Wooden: Your Honor, it is information that it was this witness' duty to receive and which he said—

Mr. Leisure: That does not appear.

Mr. Wooden: —and which he says his company did receive.

Trial Examiner Norwood: The objection is overruled. Read the question.

(The record was read from as follows:

"Q. Well, what kind of comment do you refer to, by whom?

"A. Well, by the mills that were near by us.

"Q. Well, did they make a comment to you?

"A. Yes—well, not to me personally.
"Q. Well, to your company?
"A. The company, yes.
"Q. Well, what was the comment?")

Mr. Leisure: Then I ask that the time and place be fixed, and as to who made the comment.

Trial Examiner Norwood: That can be done.

Mr. Wooden: Yes, we will try to.

Trial Examiner Norwood: Answer the question.

Mr. Leisure: Well, may we have it—may I have the ruling as to whether or not the witness is to fix the
11052 time and place before he answers and tells us about such comment which he cannot place at all, and does not know who said it?

Trial Examiner Norwood: I think Counsel can incorporate that in his question.

Mr. Wooden: Yes.

By Mr. Wooden:

Q. Mr. Crapo, from whom did this comment come?

A. I don't know,—I mean on that—it is not in—I mean it—it didn't come to me, I think it is—all I have got is hearsay, that's all.

Mr. Wooden: You cannot be the judge, I am afraid, Mr. Crapo, as to what is hearsay.

Mr. Leisure: He can be a very good judge.

Mr. Wooden: That is a legal question.

Trial Examiner Norwood: When did the comment reach you?

The Witness: I can't give you the date, either, but it was—

Mr. Leisure: Well, now, I submit that that answers the question.

Trial Examiner Norwood: Wait a moment, let him answer the question.

Mr. Leisure: He said he could not give the date.

The Witness: I couldn't give the date; it was a
11053 reflection from the sales department.

By Mr. Wooden:

Q. I was going to ask you to whom or through whom, in your organization, did the comment come?

A. Through the sales department.

Q. Does that mean Mr. Rooney?

A. Well, he—or some of his—

Q. Some of his what?
A. Some of his men.
Trial Examiner Norwood: You say it came through them. Now —
The Witness: I mean it came to me in talk, just didn't—
Trial Examiner Norwood: Was this comment from members of the industry that came to your attention?
The Witness: Well—
Trial Examiner Norwood: Was it cement manufacturers—
The Witness: Well—
Trial Examiner Norwood: —or salesmen?
The Witness: I would say, in answer to that that it chiefly arose from the Alpha; they had a mill south of Syracuse, but I—

By Mr. Wooden:

Q. What was the comment that your sales de-
11054 partment brought to you?

Mr. Leisure: Now, I move to strike the previous testimony of the witness. It has already been shown that he has not fixed the time or place. It appears very clearly on the record that the statement is entirely hearsay.

Now, I want to object to this next question, as calling for what would very apparently be hearsay testimony in the record.

Trial Examiner Norwood: I am going to overrule the objection and let the witness tell us what this was.

Mr. Wooden: The approximate time is fixed by the establishment of the silo.

Trial Examiner Norwood: Tell us what that reaction was.

Mr. Leisure: May we have the question read, because I am not clear just what question he is answering at the moment.

Trial Examiner Norwood: Read the question.

(Last question read as follows:

"Q. What was the comment that your sales department brought to you?")

Mr. Leisure: Now, unless it appears as to who it was in the Alpha Company that made the statement—
11055 Trial Examiner Norwood: Yes.

Mr. Leisure: —or when it was made; clearly, a corporation cannot make a statement—unless that ap-

pears I object to the question as incompetent, irrelevant, and immaterial.

Trial Examiner Norwood: The objection is overruled.

A. My recollection is that the criticism was in regard to trucking.

By Mr. Wooden:

Q. Trucking from your silo?

A. At Oswego.

Q. At Oswego?

A. Yes.

Q. What was the nature of the criticism?

Mr. Leisure: May I have the same objection?—

Trial Examiner Norwood: Yes.

Mr. Leisure: —to this line of testimony?

Trial Examiner Norwood: Yes, to this entire line of testimony?

A. The fundamental objection is that the truck delivers on the job when the rail shipment delivers on the nearest side track.

By Mr. Wooden:

Q. Making a difference, or lower laid-down cost 11056 than delivery by rail?

A. Well, cement only takes one trip to the job, and if it takes two trips, if it goes to the railroad station, and then on—that's—

Q. It is more economical to use the truck?

A. Well, more economical, yes—to the contractor.

Q. Well, were any representations conveyed to you that you should modify or change your method of delivery by truck from Oswego silo?

A. Well, there was a good deal—well, yes, suggestions were there.

Q. Where did they come from?

A. Well, I don't know that.

Q. Well, where—

Mr. Leisure: In that event, I move to strike out the previous answer.

Trial Examiner Norwood: Well—

Mr. Leisure: The witness says he does not know where they came from.

Trial Examiner Norwood: Didn't they come through the official channels to you?

The Witness: Well, through the sales—
Trial Examiner Norwood: Yes.

By Mr. Wooden:

Q. Your companies?

11057 A. I can give you the results. We then defined the trucking area out of Oswego.

11058 Q. Was there any other concern besides Alpha whom your sales department reported to you were criticizing your truck delivery from Oswego?

A. Yes, I think there was.

Q. Who?

11059 A. Well, I would say Lehigh.

Q. Was there any criticism brought to you through your sales department from the Federal—

Mr. Leisure: Now, I object.

Q. —Cement Company.

Q. When you speak of your sales department reporting this information to you, do you mean, Mr. Rooney?

A. I said I don't know.

Q. You said Mr. Rooney or some of his associates, I believe.

A. It came through the sales department.

Trial Examiner Norwood: Yes.

11060 By Mr. Wooden:

Q. Well, you know it to be a fact, I believe, at any rate, as you have previously said, that you met the condition by putting certain—

A. Limits.

Q. —restrictions on your Oswego trucking; is that right?

A. It has always been the plan of Huron—

Q. I beg your pardon?

A. It has always been the plan of Huron to limit its trucking inside of practical trucking limits. Now, the present condition—it is all limited, yes. I mean, that comes—we are limited at Toledo; we are limited at Cleveland; we are limited at Buffalo. We limit it at Oswego.

Q. To certain specified territories?

A. To certain specified territories that we won't go further than that. That is where the compromise—

Q. What do you mean by "compromise"?

A. Well, I mean the truck. We recognize a limited distance to trucks, and if there is any reason that we overstep it, we are willing to correct it.

Q. And in the case of Oswego, you changed those limits after criticism was brought to you from some of your competitors?

A. I think it was rather a fear rather than—but,
11061 anyway, they made a trucking area out of Oswego.

Q. What do you mean by "fear"?

A. Because it occurred in other places. They didn't like the delivery on the job.

Q. Who did not?

A. I mean, it wasn't popular with the rail mills.

Q. The rail mills?

A. That is, the straight mills, the straight rail mills.

Q. You mean by that the cement mills located on railroads?

A. Well, that made deliveries on rail.

Q. And that had no other delivery, I suppose? No water delivery?

A. There wasn't a water delivery. The mills that carried this stuff by rail and wanted to end it on the rail, and not carry it to the job.

Q. Was Alpha one of those?

A. Alpha was the one at Oswego.

Q. Well, was it a rail mill, as you speak of it?

A. Well, my—Alpha had this mill. It wasn't much good south of Syracuse, a few miles, and I think they delivered all their cement by truck. The outcome of this was that Alpha discontinued trucking, and they made all the people take it by rail, as near as I—

Q. You mean at one time they delivered by truck, and then discontinued it?

A. I think so.

11062 Q. In favor of rail?

A. In favor of rail.

Q. Then you came in again with trucks?

A. No.

Q. Is that right?

A. We got stalled at the same time. We didn't go into Oswego—I mean into Syracuse, and neither did they.

Q. I believe you said that criticism from rail mills came to you of your trucking arrangements around Cleveland and other lake ports?

Mr. Leisure: I don't think the witness said that.

Mr. Wooden: Well, I think he did.

Mr. Leisure: I think that is what counsel said.

Mr. Wooden: Let him correct me if I am wrong.
Trial Examiner Norwood: Is that what you said?
Mr. Leisure: May we have the question read?
The Witness: Let's have the question.
(Question read.)
Trial Examiner Norwood: Is that true?
The Witness: Yes, that is true.

By Mr. Wooden:

Q. Now, as to these other lake ports, like Cleveland, where did the criticism originate?

A. Well, it is—the nearer mills I think is Bessemer—I mean, I just can't remember of any instance.

11063 Mr. Leisure: Well, now, I object to the witness—
The Witness: Middletown.

Mr. Leisure: —testifying if he doesn't know, and I think we should have specific conversations. I don't think these guesses are very helpful to either side.

Trial Examiner Norwood: Read the question.
(Question read.)

The Witness: Well, I will say I don't know. All I know, the result is that I think we truck at the present time in Cuyahoga County only.

11065 Trial Examiner Norwood: Yes. All right. Go ahead.

By Mr. Wooden:

Q. Did you have any information from Mr. Rooney or your sales department to the effect that Mr. Johns of Medusa was complaining about your trucking around Cleveland?

A. I think I can answer that. I got that direct from Johns.

Q. Did you get it direct from any other cement mill representative?

A. Around Cleveland?

Q. Yes.

A. Well, Standard over here—what is that fellow's name?

11066 Q. Standard?

A. Standard.

Q. Who at Standard? Mr. Davis?

A. He was the sales manager, yes.

Q. W. A. Davis, is that?

A. I think so.
Q. Did you get it from any others?
A. Well, I should say Schmutz of Bessemer.
Q. Did you get it from anybody connected with the Diamond?
A. Where is Diamond? Is that at Middlebranch?
Q. Middlebranch.
A. I don't think so. That is, my—
Q. You got it direct from all these people that you named?
A. Just in—just in talk.
Q. Yes, I understand.
A. That is all.
Q. Did they suggest to you what they thought you ought to do about it?
A. They suggested theories, yes.
Q. Theories?
A. Theories of limiting truck movement.
Q. To certain specified territories?
A. Yes.
Q. Did you after that limit your truck deliveries 11067 to certain specified territories?
A. I think if it isn't here, I think that is out in every case. In Cleveland, my recollection is that it is confined to Cuyahoga County. It doesn't get over into Lake or—
Q. Did any of these gentlemen you named suggest that you ought to limit your truck delivery to Cuyahoga County?
A. Oh, all I can say on that is that whatever our trucking schedule is, that was what we agreed to. I mean, under the thing, and, of course, when you go into a place and have no limit, why, I mean ours—but that was fair between the—I don't know whether I am satisfied with it now, but that is a matter of all our trucking limitations. We are perfectly willing to furnish as they stand now.
Q. Did the criticism cease after you limited it to Cuyahoga County?
A. Well, it is a difference of opinion, which I don't think will ever cease.
Q. Well, is the criticism—
A. They may think we are Jews and they are Catholics. We can't get on a common basis in the cement business.

Q. Well, is criticism still coming to you about your trucking in Cuyahoga County?

A. I think not. I think that is peaceful at present.

Q. In other words, you satisfied the criticism by limiting your trucking to Cuyahoga County; is that
11068 right?

A. We have—I think we have accomplished the purpose of being a good neighbor.

Q. After your neighbors told you what they thought being a good neighbor would call for?

A. Yes.

Q. Is that right?

A. Well, how does the neighborhood—well, I won't answer the question. After sensing the neighborhood opinion, why, that is what we put in.

Q. How about some of these other lake ports like Toledo? Did you find a similar situation there?

A. Well, that is gone.

11069 Q. Mr. Crapo, the last question I asked you before the noon recess was this: "How about some of these other lake ports like Toledo,—did you find a similar situation there?"

Your answer is: "Well, that is gone."

Will you explain what you meant by saying, "that is gone."

A. I don't think I did—of course, I mean it is no answer—but similar situation to what?

Q. As in the case of Cleveland and Oswego.

A. Oh, that's the trucking rates?

Q. Yes, that is right.

A. Yes, there was a similar situation.

Q. Did you have criticisms brought to you of your trucking policy in the Toledo neighborhood?

Mr. Leisure: Now, I object to the question unless we have some basis laid for it. This witness is asked,
11070 "Did you have some criticism" and he answers "yes" or "no." We have no basis of meeting that kind of testimony. I think the time and place should be fixed, and the persons to whom he talked should be designated.

Trial Examiner Norwood: The objection is overruled.

Mr. Wooden: Can't do it all at once.

A. Criticisms came to me through our sales department.

Mr. Leisure: And I move to strike the answer out because it clearly shows that it is hearsay.

Trial Examiner Norwood: Motion denied.

By Mr. Wooden:

Q. From whom were you informed that the criticism came?

A. It—my recollection is that it was Alpha, Medusa, Standard, and—well, I won't go any further; those three anyway, they were the nearest.

11071 Q. Did information come to you in connection with the Toledo situation, to the effect that the Universal Atlas was criticizing?

Mr. Leisure: Now, I think this leading should not be continued. The witness clearly has not shown any hostility to the counsel's ideas—until such hostility is shown, it seems to me he should not be allowed to lead him in this way.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think he may ask him that; that is—

A. Well, I don't remember—Atlas—I mean Universal, is quite a ways off.

By Mr. Wooden:

Q. In connection with Toledo?

A. I mean, in a way, I don't remember.

Q. Did you have any direct representation made to you by your competitors in the Toledo area, about your trucking from your Toledo silo?

A. I—my recollection is that we extended—well, first, the trucking was confined to Lucas County, and—

Q. Is that Toledo?

A. That is at Toledo.

Q. Yes.

11072 A. Lucas County, Toledo—and then we extended that, Huron, to some adjacent counties, and that created quite a lot of criticism.

11073 Q. Well, did any of your competitors make the criticism direct to you individually?

A. Not me, personally.

Q. What did you do as to your trucking arrangements around Toledo after that criticism reached you?

A. Well, the first thing we did was to withdraw back from Lucas County, confined ourselves to Lucas County.

Q. Was that all? You say that is the first thing?

A. That is all at that time.

Q. That is the first thing you did?

A. That was the—and then after that we extended it again, but not quite as many counties as had been in the first one, and that, I think, is now going on.

Q. When you extended it beyond Lucas County the second time, did you accompany it with a proviso that the delivered cost by truck would be the same as by rail?

A. I think in the Huron practices of old, in putting out our circulars, which we do, to the trade, we named the price, but gave the customer the option to have it delivered by rail or truck.

11074 Q. But the price delivered was the same whichever way he took delivery?

A. Either way. That was up to him.

Q. Either way.

Did you have any similar criticism or objection to trucking in the Detroit area?

Mr. Leisure: I object to that, similar criticism. If the counsel wants to ask him about any specific conversations, he knows very well how to do it without attempting to get these broad, generalizations into the record.

Trial Examiner Norwood: Yes. He may state the subject of the criticism a little more clearly.

Mr. Leisure: If he is going to state it, the subject of the criticism, I would like to have the time fixed.

Trial Examiner Norwood: Well, we have gone into that pretty thoroughly this morning.

Mr. Wooden: The time has been fixed generally along these lines.

Mr. Leisure: It hasn't been fixed as far as the record shows as to when this conversation that you are now asking him about certain criticism took place. There is nothing in the record as to when this occurred or as to who indulged in the criticism.

11075 Mr. Wooden: I propose to follow it up, of course, with other questions, that will try to develop all this witness knows about it.

Trial Examiner Norwood: The objection is overruled.

The Witness: What was the question?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I will ask Counsel for the Commission to be a little more definite as to the criticism, what he means by "similar criticism."

Mr. Wooden: All right. I will first ask one or two other questions.

Trial Examiner Norwood: All right.

By Mr. Wooden:

Q. Did you have a silo at Detroit?

A. Yes, at Detroit.

Q. When was it established?

A. Well, I will have to look at my record over there. It is an old one.

Mr. Wooden: Can you state, Mr. Smith?

Mr. Smith: It was evidently before 1925. My schedule here goes back to 1925.

The Witness: It was quite a ways back.

Mr. Smith: Sometime prior to that.

11076 By Mr. Wooden:

Q. Have you trucked from the Detroit silo?

A. We have trucked always from the Detroit silo. I mean, I might—if I could interject something, Detroit created automobiles and trucks, I mean, and we being right there, why, we used them.

Q. Yes.

A. Of course, in the city, and then as they got better, we used them further off. I don't think in the cement industry there was any—it was new there.

11077 There wasn't any criticism, because they didn't know anything about it. It just naturally grew up there.

Q. Your testimony is that when you trucked in the Detroit area, you did not encounter any criticism from any competitors?

A. Not when it started.

Q. That is what I mean.

A. And neither—

Q. Later on?

A. Neither did we originate trucking.

Q. Yes. Later on did you encounter some criticism in the Detroit area?

A. Yes, we got criticism.

Q. Did that come to you direct or through your sales department?

A. That came to me direct.
Q. From whom?
A. From the Universal.
Q. From whom?
A. From the Universal.
Q. What individual?
A. Mr. Affleck.
Q. What did he say, and when was this? Can you fix the time, as near as you can?
A. I don't remember the time, but I can remember they didn't want any trucks used, and at that time
11078 the Huron was the sales agent for the Ford Motor Company, I mean, in their plant, and he suggested that I go around and cut off the idea of delivering by trucks.
11079 Q. Go around where?
A. Well, the name around among the local people there—the cement—there is a number of them.
Q. You mean the other cement manufacturers?
A. The other cement manufacturers.
Q. Yes.
A. And I declined, I said I was not going to Henry Ford's and ask him to work his cement mill where he couldn't use the truck. At that particular time he could put out more trucks than all the rest of them put together, and I said, I mean in answer to that, as far as it went, I said to Affleck you go over and see him.
Q. Do you know whether he did or not?
A. I don't know; I don't know whether he did or not, but I don't think he went.
Q. Did anybody, as far as you know?—
A. No, not to my knowledge.
Q. —go around to other cement manufacturers at that time—
A. No.
Q. —in an effort to eliminate trucking?
A. No, not that I know of.
Q. About what time was this?
A. Well, subject to a little more thought, I think it is in the middle '20's, or before.
Q. You are quite sure it was prior to 1930?
11080 A. Yes, oh, yes.
Q. Yes, way back—
A. It is back quite a ways, because trucks started—

Q. Are you fixing that date with reference to when you started trucking there, or when you had this conversation with Mr. Affleck?

A. We started, I think, really, with the first trucks.

Q. Yes, but what is this date that you are referring to?

A. Oh—the one of the conversation with—

Q. I see.

A. —with Affleck.

Q. Well, what was the later development of the trucking situation in the Detroit area? What did you do later there?

11081 A. It is—later, we named the counties in southeastern Michigan to which we would give the option to the people as to whether they would take by rail or by truck.

Q. At the same delivered price?

A. At the same delivered price, the price being in there. Now, we have never had that straight with Aetna.

Q. You mean as to—

A. Our territories always—

Q. —as to counties?

A. Counties.

Q. Did other Michigan cement manufacturers make any representations to you as to what you ought to do in the Detroit area regarding trucking?

A. Not that I know of.

Q. Did Mr. Affleck give his reasons to you for being opposed to the use of trucks?

A. When trucks first started there was no uniformity in the truck rates. You get a price from a supposed trucking concern that had only two or three trucks, broken-down Fords, at first.

Q. You mean, now—

A. Now, this was the reason, it was the uniformity of price—any person that is not sitting right at a locality cannot tell what the trucking situation is, he is helpless.

11082 Q. Are you now giving us the reasons as Mr. Affleck stated them?

A. Yes, that was the reason.

Q. As he stated them?

A. Even the possibility of making a delivered price by truck.

Q. A delivery price that would be—

A. Uniform.

Q. —that would be certain or uniform?

A. Yes, uniform, in general.

Q. And, by uniform, you mean the same delivered price for various cement companies?

A. Well, the one that was in the atmosphere—I mean, you want that all the time, of course, but there was some dominant company that was making the price, and, if it was rail, you would go back to what they were making at the mill, but with the truck, why, you couldn't, because every truck rate was different.

Of course, that has changed since then.

Trial Examiner Norwood: How has it changed?

The Witness: Well, because—

Trial Examiner Norwood: You mean—

The Witness: The State laws have come in, that is between contract carriers and public service carriers, and the only thing is the individual truck.

11083 By Mr. Wooden:

Q. You mean that when the rates are made certain, then the delivered price becomes certain?

A. Well, it becomes—it becomes open to analysis.

Q. So that everybody knows what it was?

A. Yes, because you know what the Michigan rates are for trucking, and in the different neighborhood States to which—

Q. Did you—did any of your competitors suggest to you the counties in the Detroit area to which trucking should be confined?

A. No, I think it was fully done by Huron, that circular was put out by Huron, that in order—best to explain that, possibly, a little—why, Ingham County was not in it.

Q. Now, about when was this that you built your silo at Milwaukee?

Mr. Smith: It was in existence in 1925; I cannot tell a prior date.

By Mr. Wooden:

Q. Did you receive any objection or criticism to your use of trucks in the Milwaukee area when you built your silo?

A. Not the Huron—we sold and distributed over there,—Wisconsin and Weston.

Q. What was it?

A. We sold one concern in Milwaukee.

Q. Who was that?

11084 A. Weston Lime & Supply, and they did the distributing; I don't know whether they heard anything or not.

Q. Do you have any report from them—

A. No—

Q. —to that effect?

A. None that I remember.

Q. Did any competitors discuss with you your trucking arrangements around Milwaukee?

A. Of course, the first trucking was done inside of the city.

Q. Yes.

A. And that, of course, is recognized all around—there has been no—but I can remember—when I began to get outside of the city.

Q. Well, whenever that was, did any competitors take up with you the extension—

A. No.

Q. —of your trucking service outside the city?

A. No, I think that is fixed, however, by—I forget just where it comes—it runs on the eastern part of Wisconsin.

Q. Yes, but wherever it comes, did any competitors discuss with you the—

A. No.

Q. —extension of your trucking area there?

A. No, we didn't need that; they put it in themselves, I think—I think that's run—

11085 Q. Do you mean to say—

A. It circles out from Manitowoc, and circles out from Milwaukee.

Q. Do you mean to say that you did not encounter criticism or objection in the Milwaukee area as you did in these other lake ports that you referred to?

11086 A. We didn't there. When we put our silos in, that method was adopted by the competing mills. For instance, Manitiwaux got a place. They come down by water, and Petoskey, and Universal has got a dock there, and then Lehigh, I think, has a warehouse. They

rail it. But, I mean, it is the same. They all came to that, and I think Hawkeye was in there, too.

Q. In other words, your competitors put in silos, too?

A. Yes.

Q. But my question is directed particularly to the trucking from the silos. You encountered no criticism there from your competitors about your method in that respect; is that correct?

A. That is right.

Q. How about Duluth, Minnesota? Did you build a silo there?

A. We built a silo.

Q. When?

A. That was one of the early ones. That was way back.

Mr. Smith: That was back before the twenties.

By Mr. Wooden:

Q. Did you truck from that silo?

A. We sell up there to Cutler-Magner Company. The great bulk of their stuff goes by rail.

Q. From Alpena?

11087 A. No. Well, no, from Duluth, you see, by rail.

Q. Did there come to you any criticism of their trucking?

A. It is a small thing. I think there has been criticism.

Q. Of what kind and from whom?

A. Well, the only other mill there is the Universal. We are a little nearer to town. Their trucking costs them more than ours. I think they always felt that that wasn't quite as equal as it ought to be.

Q. Well, did anyone talk to you about it?

A. No, sir.

Q. Where did you get the information you are just now describing?

A. Through the sales department.

Q. Your own sales department?

A. Yes.

Q. Any individual in particular?

A. No.

Q. When you refer to Universal there at Duluth, you mean Universal Atlas?

A. Yes, Universal Atlas.

Q. Did the Huron Company make a bid for the Government requirements on the Fort Peck, Montana, dam?

A. Well, we made a number of bids.

Q. On that particular—

11088 A. On the Fort Peck.

Q. On Fort Peck?

A. We were unsuccessful for at least the first three.

Q. Was there more than one invitation to bid on Fort Peck that you did not bid on?

A. We received regular invitations, and we made the regular bids.

Q. Was there one occasion when you did not bid on that Fort Peck?

A. Yes, because we couldn't fulfill the requirements.

Q. In what way?

A. The invitation came out that they wanted the 660,000 barrels, or something like that, with a minimum amount delivered every month. Well, we would have had to go through Duluth, I mean, to get our economy, and we didn't have storage enough to carry that minimum when we were not open to navigation, so we didn't bid. We were out.

Q. When you bid on the Fort Peck requirements, did you not make your delivered price the same as that of other bidders?

A. In the previous ones, yes. We never got a Fort Peck contract on bids.

Q. Do you know whether they were let by lot or not?

A. That I couldn't say.

Q. Did you ever receive any criticism or objections from any of your competitors to your bidding out

11089 in that territory on that business?

A. No, I think not.

Q. In one of your bids on the Fort Peck dam, did you offer sample containers without cost?

A. Not just that. That was when the N. R. A. was going.

Q. Yes, but that was when Fort Peck was—

A. We offered sample tin cans instead of cloth sacks.

Q. Without charge for them?

A. Yes.

Q. Did you have any criticism or objection made from your competitors because you did that?

A. We didn't have any criticism, but the man, who looked the bids over, General Markham, said we were

low; that is, Huron was low, in order to be given the contract—

11090 Q. Who was Markham?

A. General Markham. He is in the Army, isn't he?

Q. Yes.

A. That is what he reported. And then the Cement Code Authority, without the usual formalities, notified the Government down there that they had all given them in tin containers. They would all give these samples.

Q. They would all do it?

A. They would all do it. And then we were equal, and Ash Grove got the contract.

Q. You were low because you had first offered to give these sample containers; is that your answer?

A. I don't know how that offer was made, but, of course, in the mills where you use a tin container, you put them up. You can get at them. But with a cloth sack, cloth sacks all piled in together, you never could find the kind you were looking for. It is a very practical question.

Q. Was any charge made by your competitors to the effect that you had violated the code in that connection?

A. Well, my impression is that that was true, and, of course, we did violate it. The code was clear enough, only we didn't read it straight.

Q. And then they all violated it after you did?

A. No. Then the code authority, without going through the regular thing, just wiped it all out, and it came

11091 down to the tin containers.

Q. I see.

A. That is what happened.

Q. Did the Code Authority call it to your attention that you had violated the Code?

A. That is my recollection. And then they should have given a decision in 15 days after notifying the people interested, as I remember, but they never bothered to get us down there, but they equalized us up by everybody giving it. I don't know how they arranged that.

Q. Well, why was it if you were low you didn't get the contract?

Mr. Smith: I object to that as a conclusion.

Trial Examiner Norwood: If he knows, he can tell that, but answer from your own knowledge.

The Witness: I don't know. You never can tell what a purchaser can do.

By Mr. Wooden:

Q. Mr. Crapo, I am showing you an exhibit, No. 418-A, B, C, and D. Do you recognize it as a letter which you wrote to Mr. Affleck?

A. Yes, sir.

Q. And as one which was produced in these hearings under a subpoena duces tecum?

A. Yes.

11092 Q. Did you also send a copy of that letter to Mr. Young?

A. I did.

Q. What Mr. Young was that?

A. Well, it was Joe Young.

Q. Lehigh?

A. Lehigh.

Q. And a copy to Mr. Rooney? Is that your sales manager?

A. Yes, I think so. Oh, yes. Well, that is right.

Mr. Leisure: What is the date, Mr. Wooden, on that letter? Do you know?

Mr. Wooden: July 29, 1936.

By Mr. Wooden:

Q. And J. B. Ford, he is one of your officials?

A. Well, he is our president.

Q. You sent him a copy also?

A. Yes.

Q. Now, in that letter you refer to a conversation which you had had with Mr. Affleck on Friday, July 24?

A. Yes.

Q. And you said that "Many completed instances of competitive irritation were discussed, some of very recent occurrence and some of ancient dates."

Will you state what those recent competitive irritations were that you discussed with him on that occasion?

A. That was the emergency for the Fort Peck

11093 contract that the Army offered us.

Q. Well, what do you mean by the emergency Fort Peck contract?

A. That was not an invitation and bids. Fort Peck ran out of cement. They first got out an emergency 10,000-barrel order, or up to 50,000, giving their option, and we bid the same price that we bid three or four times before.

Q. The same delivered price?

A. The same delivered price. And the Government threw it out. And then they gave the next invitation to this larger amount, in which the Huron was excluded on account of the physical impossibility of delivery. And all the others went in there at a marked increase. I forget what it was; it is a matter of record. I guess 40 cents a barrel. And then—

Q. The increase over what?

A. Over the ones that had been furnished to Fort Peck.

Q. Preceding?

A. Preceding. I think this was the fall. And then during that time when we were the only bidder on tin, the Government had looked us over pretty well, I mean, in a way. They knew we were in distress for sales, and they came down and said, "Why didn't you bid?" And we said we couldn't make those mid-winter deliveries. "Well, why?" "Well, because the lakes freeze up."

Well, they said, "Would you bid if we get cement
11094 from somewhere else during the winter?"

"Well," we said, "we would be delighted." And then they said, "We are in an awful hurry for cement, and we will give you this price," whatever it was. Wouldn't go through any bidding, and they did it. Mr. Affleck didn't like it.

11095 Q. What was the quantity involved in that?

A. My recollection is it was 660,000 barrels.

Q. And how much was your price lower than the price previously bid by the concerns bidding on Fort Peck?

A. On this last bid?

Q. Yes.

A. I think the Government split the difference. They gave us 20 cents more than what it was in the past, but 20 cents less than these others.

Q. And you say that was the subject of your conversation with Mr. Affleck on this occasion?

A. That is the first paragraph, yes.

Q. What did Mr. Affleck have to say?

A. Well, he—no—I mean, in a general way, broad one, wanted to know why, after the bids were all open, why it was the act of the cement gentlemen to go and bid under it—without any warning, I will say.

Q. You say he wanted to know if it was the act of the cement gentlemen?

A. The cement gentlemen—I mean to do that, and I said

"That is not the case at all, I say people came out and said 'You can take it or leave it,' and we decided to take it, I didn't have any time to go around and talk with you."

Q. Well, your letter to Mr. Affleck said you discussed with him many completed instances of competitive irritation.

11096 A. Yes.

Q. That was one; what were some of the others?

A. I think I can name them all. He didn't like what I did, and then I took up some things that I didn't like what he was doing, though—

Q. Well, of course, you discussed various things concerning Bay City.

A. Milwaukee and Bay—

Q. Yes.

A. Milwaukee and Bay City, and I don't know some of the others, they were in there, and I took occasion to write this letter so that he might help correct some of those situations.

11097 Q. What was the nature of the competitive irritation at Bay City?

A. That was where Wabash put in a Bay City base.

Q. About what time was that?

A. Well, that was during that period, it was along in '95 and '96.

Q. '35 and '36, you mean?

A. Yes, '35 and '36.

Q. Well, what was Mr. Affleck discussing—why was Mr. Affleck discussing Wabash's putting in a Bay City base with you for?

A. I was discussing.

Q. I see.

A. It was around in there. Of course, the ethics of the cement business has changed, as time goes on. There was a long period where it was considered entirely improper for any mill to make a base on somebody else's mill.

Q. Yes.

A. It was all right to make him a multiple base, if you wanted to, or not, but the idea of going out of your territory from Osborn, Ohio, and up to Bay City and putting in a base that worked the long way—

Q. That was what—

A. —very, very irritating.

Q. Was it considered unethical?

11098 A. It was not by anybody but me; it got our net.
Q. Well, did you figure that's what it was aimed at?
A. No, it was not aimed at me; it was aimed at them.
Q. I mean, aimed at your net?
A. No, they didn't want it at my net.
Q. You said it got your net.
A. Well, I know, but always indirectly, because they were shooting at Aetna, and you know it was a case where one of the guns always aims at the sky and hits a calf—
Q. And they got—
A. And they got the calf that time.
Q. I see.
How long did that Bay City base last that you were discussing with him?
A. That Bay City-Wabash I don't think was ever withdrawn. Then we put in a Michigan flat price which was—
Q. You mean—
A. Well, the same price all over Michigan, delivered anywhere.
Q. Delivered anywhere in upper Michigan?
A. No, lower Michigan.
Q. Just lower Michigan?
A. Now, that was low enough so that it only affected a little right around Bay City. You see, there was only a very small—and I never heard of Wabash with-
11099 drawing that. I think it is just—well, that they never said anything—to end up at Bay City, anyway, that just disappeared.
Q. You mean by that that Wabash was lowering the price in the region or territory where they had little or nothing to dose by it?
A. That's my belief.
Q. And you said something about them shooting at Aetna; what is the basis for a statement of that sort?
A. Well Aetna, which I think is around in the racket, stole the contract from Wabash in the southwest part of Michigan.
Q. Will you enlarge on your statement about them stealing it, and what contract was it?
A. I only mean the contract with Wabash, and deliveries were made on it, and then Aetna goes down and takes it away from them.
Q. Do you know what contract it was?

A. No, I don't know the name of the contract.

Trial Examiner Norwood: What do you mean, take it away from them?

The Witness: Well, that—you see, a cement contract isn't a contract. Back in the early days every cement company you went into had a big sign there, "A contract is a contract." Well, they were kidding themselves. You only sell the goods after it is forwarded.

11100 You make the contract to carry it through, and then if somebody underbids you they don't—you don't get any more deliveries, and I never heard of a cement company suing anybody for the fulfillment of one of those contracts.

Q. Is that the sort of a contract you refer to when you say Aetna stole it from Wabash?

A. Well, I mean, yes, they went around, and after the thing was all going with a notification, I don't know how they got it, but, anyway, deliveries came out of Aetna.

Q. They cut the price?

A. Well, I don't know, they got the contract.

Q. Do you know anything about how the dispute was settled?

A. Well, the vindictive—if you use that word, base being put off for that purpose, disturbed them.

Q. Distrubed whom?

A. Disturbed the general industry, and some in the general industry came over to Detroit to quiet that situation down.

Q. Who came over?

A. I don't know; I wasn't there; I wasn't asked.

Q. Well, came over from where?

A. Well, from Chicago and around in there, at least one came from Chicago, but there were three or four.

Q. Who is the one that you refer to—

A. I think it was Stone.

Q. —at Universal Atlas?

11101 A. Yes, only one—and that's hearsay, too; I didn't see him.

11102 Mr. Leisure: I move to strike it all out, if the witness doesn't know anything about it—he admits it is hearsay.

Mr. Wooden: I want to find out the basis of his knowledge.

Mr. Leisure: I object, I make the motion—

Trial Examiner Norwood: Read the statement.

(The record was read as follows: "Question: Well, came over from where?

"Answer: Well, from Chicago and around in there, at least one came from Chicago, but there were three or four.

"Question: Who is the one that you refer to—

"Answer: I think it was Stone.

"Question: —at Universal Atlas?

"Answer: Yes, only one—and that's hearsay, too; I didn't see him.")

Trial Examiner Norwood: See if you can clarify that.

Mr. Leisure: May I have a ruling on my motion? I move to strike out the witness' statement as hearsay.

Trial Examiner Norwood: Well, you will have to be a little more definite in your motion.

Mr. Leisure: I think the statement—

Trial Examiner Norwood: What statement?

11103 Mr. Leisure: I think the entire statement by the witness since the preceding question is based on hearsay, and shows by the witness' own statement that it is based on hearsay, and I move to strike it out on that ground.

Trial Examiner Norwood: Which statement?

Mr. Leisure: May I have it read? The one in answer —the entire answer to the preceding question.

Trial Examiner Norwood: I understand that it covers several answers.

Mr. Leisure: It may. It was quite a long answer, but I think the whole answer, apparently, is hearsay on the record.

Trial Examiner Norwood: I think the shorter way is to defer ruling on your motion until I can read it in the record, and then I will consider it.

In the meantime he may be able to clarify it.

By Mr. Wooden:

Q. I ask you to state, Mr. Crapo, the basis of your statement as to Mr. Stone coming over in connection with that matter?

A. I think at about the time that this letter—

Q. Exhibit 418-A to D?

A. When I was over there.

Q. When you were over there?

11104 A. I mean over at Chicago, and that is this paragraph, Mr. Stone said he had been over there—

Trial Examiner Norwood: Who said that?

The Witness: Mr. Stone told me that he had been over there.

Trial Examiner Norwood: And that's why you call it hearsay?

The Witness: Why, I don't know—

Trial Examiner Norwood: Why you refer to it as hearsay?

The Witness: I don't know what hearsay is—why, yes, that's hearsay—that's my recollection that I—

11105 Mr. Wooden: Well, it is my notion, Your Honor, that obviously that is not hearsay at all. It proves to be much more direct than the motion to strike anticipated; it is a direct statement of a statement made by Mr. Stone of the Universal-Atlas Company to this witness.

Mr. Leisure: The witness has not yet said that Mr. Stone of the Universal-Atlas Company gave him the information which he stated in this long answer.

Mr. Wooden: He said Mr. Stone said he had been over to Detroit on a matter—had been—

Trial Examiner Norwood: Yes. Well, I will keep your motion open for consideration. We will look over the record and see what should be done.

Proceed.

By Mr. Wooden:

Q. Did Mr. Stone tell you what he had been over to Detroit about?

A. I have an intimation in general about this Wabash-Bay City base.

Q. You believe that he told you that he had been over there about that?

A. Yes.

Q. Is that what you mean to say?

A. Yes.

11106 Q. Did he say whom he saw over there?

A. No,

Q. Did he say what results he had accomplished over there?

A. Well, he didn't tell me any of the details of what happened, but I gathered the impression that they had quieted the situation.

Mr. Leisure: I move to strike out the witness' statement that he gathered the impression—

By Mr. Wooden:

Q. Did you gather—

Mr. Leisure: —from that point on, may I—

Trial Examiner Norwood: Wait a moment.

By Mr. Wooden:

Q. Did you gather that from what Mr. Stone said?

Trial Examiner Norwood: Wait a moment.

Mr. Leisure: —as not being responsive, and also as hearsay.

A. Yes, from what Stone said.

Trial Examiner Norwood: Can you answer that more definitely than that? Is that your understanding as a result of the conversation?

The Witness: Of course, the general thing was common talk.

Trial Examiner Norwood: Yes.

The Witness: This is the nearest, I think, I got, 11107 and I don't think I even made the inquiry.

Trial Examiner Norwood: I overrule the objection.

The Witness: I mean, I was satisfied in my own mind what it was.

Trial Examiner Norwood: I will overrule the motion for the time being. I will study the record on that.

The Witness: I can say what the—

By Mr. Wooden:

Q. What did you understand him to mean by "quieting the situation"?

Mr. Leisure: Now, I object to that, whatever the witness may have understood. He can say what Mr. Stone said to him, but his conclusions are not proper.

Trial Examiner Norwood: I think the expression "Quieting the situation" was used by the witness only.

The Witness: That's all.

Trial Examiner Norwood: Did you say that Mr. Stone said he "quieted the situation"?

The Witness: He told me he did.

By Mr. Wooden:

Q. What did he say?

A. I don't know; I can't remember.

Q. But you got the impression—

A. I got the impression—

Mr. Leisure: I object.

11108 A. (Resumed) —from this thing—

Mr. Leisure: I object.

A. (Resumed) —that this was the basis—

Mr. Leisure: Just a moment; I object.

Trial Examiner Norwood: Wait a moment.

Mr. Leisure: He can state anything that Mr. Stone said to him, without stating his impression.

Trial Examiner Norwood: If you have a definite understanding about that, you may state it, if that is the question.

The Witness: He has asked me about this letter.

Trial Examiner Norwood: Yes.

The Witness: This letter came out of this talk.

Trial Examiner Norwood: Well, can you take that letter and refresh your memory and state—

The Witness: No.

Trial Examiner Norwood: That that is your definite understanding?

The Witness: Well, it was at that time.

Mr. Wooden: I do not believe the letter will be helpful.

The Witness: Oh, the letter is a general criticism of why they criticized me so much from taking the contract, and why they were sound asleep on some of these other things that were very annoying to both the good

11109 of the industry and, particularly, to the Huron; one was the Bay City base and the other was the Milwaukee price structure.

By Mr. Wooden:

Q. Well, we will come to that.

A. I mean in a way, that just came out of it.

Trial Examiner Norwood: I shall overrule the motion that you made to strike, which is just pending. I shall overrule the motion, Mr. Leisure. He may state his impression or understanding resulting from these transactions.

By Mr. Wooden:

Q. Was it your understanding from what Mr. Stone said that his visit over there had resulted in quieting the situation, as you put it?

11111 A. That is my understanding.

By Mr. Wooden:

Q. Do you know as an officer of a concern operating in that territory whether the situation was quieted in whatever sense you want to use the word, and, if so, state how it was quieted?

A. I don't know how it was quieted, but it was quieted, but I don't think to the extent that the Wabash-Bay City base was withdrawn.

Q. To what extent and in what way was it quieted, then?

A. Well, I think that Wabash and Aetna again got on speaking terms.

Q. Well, to what extent was it quieted as it affected the price situation?

A. I don't think it helped the price situation at all; I mean, it didn't get it up.

Q. Did it get it up at all, or was it gotten up partially; can you state that?

A. I don't think it ever got up until—I mean, perhaps the next problem, until we made the Michigan flat price in the Lower Peninsula, and then we blotted it out.

Q. Did that make a higher delivered price at Bay City than before?

11112 A. A little lower.

Q. Was there a previous occasion within your knowledge where Wabash put in a base at Saginaw or Bay City?

A. I don't recollect any.

Q. Back in 1932 or 1933; do you remember that?

A. Of course, at that time there were a great many shifting bases. I can't remember them any more. I think you have got my maps.

Q. Do you remember anything about an occasion where Aetna bid in Indiana on state bids?

A. No, I have no recollection at all.

Q. Showing you Commission's Exhibit 909, that is your letter, is it not, to Mr. F. R. Johnson, dated July 9, 1936?

A. It is rather vigorous language, isn't it? Oh, that does recall it to me. I think he tried that reprisal once before, and it worked.

Q. Who tried what reprisal?

A. Wabash did.

Q. Well, that is the previous occasion that I was directing your attention to.

A. Yes; that is the one that I had forgotten.

Q. In that letter you stated that: "In the previous instance the Big Brothers in the cement industry interested themselves in the matter, and accomplished a re-
11113 conciliation which restored the base price."

A. Yes.

Q. Whom did you mean by the Big Brothers?

A. Why, I meant the leaders of big companies that had strong personalities.

Q. Well, be a little more specific. Who were they?

A. Ever since I was in the cement business, there has been certain big companies, but, of late, it has been the Universal, Lehigh, Alpha, International.

Q. When you say "of late"—

A. That is, we will say the present time.

Q. When you say "of late" what period do you have in mind?

A. I mean, we will say the last five years. Of course, that is indefinite.

Q. Referring to your letter of July 29, 1936, Commission's Exhibit 418-A-D, were you aware that talk with Mr. Affleck and the writing of your letter were very shortly followed by the separation of Mr. Cree from the Aetna salesmanagership?

A. I have no—I know nothing about that.

Q. Did Mr. Stone say anything to you about Cree's methods of handling Aetna business?

A. I never heard anything from Stone about Cree except complimentary.

Q. Did you attend any meeting of cement manufacturers at which Cree's methods of selling for Aetna
11114 were the subject of discussion?

A. No, I never attended.

Q. Did you attend any meeting of cement manufacturers in the Michigan area at which Mr. Johnson was present?

A. No. I never saw Mr. Johnson often.

11115 Q. You had some conversation with Mr. Johnson, however, did you not, along about that time with regard to cooperation between his company and yours?

A. Mr. Johnson live in Boston. I was born in Massa-

chusetts. I seen Mr. Johnston in Boston. I never saw him in Detroit except when he dropped into my office.

Q. Did you see the correspondence between him and Mr. Rooney of your company regarding the policy of Mr. Cree and the Aetna Company?

A. I didn't see that correspondence.

Q. For instance, here is Exhibit 417-W-X, a letter to Mr. Rooney from Mr. Johnson, of October 9, 1933. Whose writing is it on here, "Mr. Crapo to note, A. J. R."?

A. That is Rooney's, and that is mine (indicating).

Q. You didn't note that at the time?

A. Yes, I noted that.

Mr. Smith: What exhibit is that?

Mr. Wooden: 417-W and X.

By Mr. Wooden:

Q. Well, Mr. Crapo, on the subject discussed in your letter of July 29, 1936, to Mr. Affleck, Commission's Exhibits 418-A to D, inclusive, was the Milwaukee price structure—was that one of the sources of competitive irritation?

A. No, I think the price was satisfactory to me. My query was there, that it was a little too high.

11116 Q. Yes.

A. Because why did Dewey come in?

Q. Because what?

A. Because why did Dewey come in?

Q. It wasn't a source of competitive irritation there except possibly to you; is that what you mean?

A. Well, Dewey was a little irritating.

Q. A little what?

A. Dewey breaking in was a little irritating. They gathered up quite a bit of business.

Q. Were you critical of that because Dewey had a freight rate of 53 cents a barrel into Milwaukee by rail, and yet could get it there because the price was high, as you put it?

A. Possibly too high, yes.

Q. What base made the price in Milwaukee?

A. I think it was Milwaukee base.

Q. And what was it?

A. Well, now, I cannot say. I think it has been quite stationary. It is in the records, but I would have to refer to it.

Q. There was no mill in Milwaukee, and you might say that was a port price or a silo base, or what?

A. Well, in the old days we called it a port price but of late it is a plant price.

Q. Silo price?

11117 A. Well, I call it plant and you call it silo. But that terminology was created by Colonel Young. I mean, that is where they got it.

Q. You thought the price in Milwaukee was too high, and why didn't you cut it?

A. Well, I didn't cut it because I hoped that Dewey might withdraw.

11118 Q. Did they?

A. They haven't yet. The price can still be cut.

Q. You say the price can still be cut?

A. Yes. I mean there isn't any reason if they—

Q. Well, do you still think it is too high?

A. Well, in another letter that you have got there, I think I was decidedly sure it was too high if Marquette goes in there.

Q. The sum and substance of the Milwaukee price structure, as you saw it, and as you wrote it, was about like this: that the price there was high enough to permit Dewey to come in on the 53 cent rail rate, while there was no necessity of the price being that high if—

A. Well, to put it possibly in another way, if Dewey can get in there and make an honest return on his investment, why, then, Huron must be making too much money.

Q. You wouldn't undertake to say that as far as other concerns there in Milwaukee are concerned?

A. (No response.)

Q. You made some reference to your being quite sure that the Milwaukee price was too high if Marquette went in there: What do you mean by that?

A. Well, that is another letter which—

Q. Yes, sir. Is that Commission's Exhibit 418-E?

A. I think so.

11119 Q. E and F?

A. Yes.

Q. Is that your letter?

A. Yes, sir.

Q. To Mr. Affleck?

A. Yes, sir.

Q. Under date of August 5, 1937?

A. Yes.

Q. Well, now, will you continue with your statement? Give your reasons for your last statement, that you were sure that it would be too high in Milwaukee if Marquette went in there.

A. The Marquette mill is down at LaSalle. It can get out the Chicago drainage canal, and then it would get out in the open lakes for about 80 miles up to Milwaukee. And I read in the paper, that is, the Pit and Quarry which I have got down here, where they went around where Mr. Wecker said, always looking ahead to expand, that the first thing they had to do was to build a cement storage and packing plant terminal at Wisconsin.

Q. Milwaukee?

A. Milwaukee, Wisconsin, and water transportation facilities, for the transport of their cement from LaSalle to Milwaukee.

Q. Well, still, what has that to do with your
11120 statement that if Milwaukee—if Marquette went into Milwaukee, you are sure that the price at Milwaukee was too high?

A. Because I don't think that Marquette would go in there and spend a lot of money without the price was high enough to justify that expenditure, and if it is, why, I think it would be an unwise investment on their part. That was kindly written.

Q. Similar to your analysis of Dewey getting into Milwaukee by rail; is that right?

A. Absolutely. The only difference was that Marquette would have to put up a lot of cash in order to get facilities; all Dewey has got to do is order a railroad car, and they can pay their way that way any time they want to.

Q. Why did you write to Mr. Affleck about it, about Marquette?

A. Oh, I see. Well, I wrote him right in there because I consider him Elder Statesman No. 1.

11121 Q. Did you expect him to do anything about it with Marquette?

A. I didn't know. I never got an answer, but he sees them a great deal more around there, and being entirely —I thought he might be much more effective than I in conveying the fact that it was an unwise investment to put so much money to get up there, if they were depending upon

that price, being where it was. I tried to put it back in here (indicating). What did I say?

Q. Well, you did say "perhaps Wecker things that the price umbrella is nailed at the present height in Milwaukee."

Q. What did you mean by the price umbrella?

A. Well, that is the base price as the umbrella that lets anybody from the world come in, if you get it. Of course, it is so far off you don't go, but there was one that was pretty close in there, and that is our back yard.

Q. What do you mean by your back yard?

A. Well, my definition of a back yard is that locality from your mill where you can put a sack of cement delivered on the streets cheaper than anybody else.

Q. And Milwaukee is in your back yard?

A. I can't prove that, but that is the theory I have been working on.

Q. And is Milwaukee part of your back yard in that sense?

11122 A. I consider Milwaukee as a part of Huron's back yard.

Q. And has the price umbrella maintained the height that it had in Milwaukee?

A. I think the nails are still in there.

Q. You raised the question with Mr. Affleck in your letter of him of August 5, 1937, Commission's Exhibits 418-E and F, as to how "Universal had kept Wecker's envious eyes off of Chicago and environs."

A. I haven't got an answer to that.

Q. Did you mean that Marquette did not sell in Chicago and environs?

A. All I wanted was why did Marquette go to work and publish that they are going to Milwaukee and pass right by the Chicago situation where the price of cement was the same, as I understood it.

Q. Can you say whether or not Marquette did go into Milwaukee as planned?

A. It hasn't gone yet.

Q. It hasn't yet?

A. No.

Q. Did you ever talk to Mr. Affleck about it?

A. Not except this letter.

Q. After this letter?

A. No.

Q. Did you ever take it up with Marquette direct?
11123 A. No.
Q. Do you know whether or not Mr. Affleck ever took it up with Marquette?
A. No, I haven't got the slightest idea.
Q. In your letter to Mr. Affleck, Commission's Exhibits 418-A to D, in July, 1936, you spoke of the obligation of sharing with your customers moneys saved by the adoption of proven money-saving devices.
A. Well, I think that—
Q. I haven't asked you a question yet.
Did you have in mind when you used that language, the obligaton which you felt Huron had to lower the price in Milwaukee by sharing with your customers the money saved by the adoption of proven money-saving devices?
A. I don't know how thoroughly Huron acted on that, but I think that is our obligation.
Q. Well, as a matter of fact, the price in Milwaukee still stands as it was then; is that right?
A. That is my impression.
Q. And why, if I may ask, has not Huron shared with its customers in Milwaukee some of the proven money-saving devices that it has?
A. Well, the customers have not fully cooperated on account of the times. Cement price is the cost of—the cost of cement is very largely determined on your vol-
11124 ume. The volume is so small over there that it almost run our overhead, and I am not ashamed of the amount of money that we have made over in Milwaukee on those prices.
Q. You are not ashamed of it?
A. No. I mean, you cause business more trouble, and then we might have to be a little apologetic if we held that price.
Q. This morning, Mr. Crapo, you used the word "fear" in connection with this trucking situation over at Oswego and various points. I am asking you if you had any fear in regard to the matter of sharing with your Milwaukee customers some of the benefits of your proven money-saving devices?
A. I don't think I have any fear in that particular.
Q. What was the sense in which you used that word this morning?
A. I forget what was the question.

Q. It was in regard to Oswego on the trucking there.

A. Oh, we always have—when you get into a difference of opinion, and it is a big, powerful individual and company, you always got a little fear as to where they are going to hit you.

Q. In other words, do you mean that if you share in some of your money-saving devices with your customers and lowered the price, that you might be made to suffer for it?

A. Yes, I mean just that.

11125 Q. Well, haven't you had some of those very powerful competitors in the Chicago and Milwaukee district as well as over in Oswego?

A. We don't sell in Chicago.

Q. Well, Milwaukee.

A. We have had them, but, as I said, Milwaukee is our back yard. It is quiet now, but as I made it pretty well understood, they can't hurt us much in Milwaukee.

Q. Who are the competitors that you have in Milwaukee?

A. Well, you have Petosky and Manitowoc and Lehigh and Universal, Hawkeye, and I think Medusa.

Q. Dewey?

Mr. Smith: Dewey?

The Witness: Oh, well, yes, Dewey. That is a pretty well populated suburb of Chicago.

By Mr. Wooden:

Q. Again referring to your letter to Mr. Affleck, Exhibit 418-A to D, you say that "Mr. Stone is of the modernistic school of cement men, those who in recent years have put a taboo on words like 'trucks' and 'cross-shipments.'"

Will you explain what you meant by that language?

Mr. Zimmerman: Pardon my interruption. What is the date of that letter?

Mr. Wooden: July 29, 1936.

Mr. Zimmerman: Thank you.

11126 A. When a cement company makes a cross-shipment, that means getting out of his back yard. He, of course, gets less net money the further he goes.

Q. Yes.

A. Well, if it goes too far, it loses money, and you may talk with these people that that is a foolish act, or, rather, an unneighborly act, because they will lose money, and they just don't—they got the price, didn't they?

Q. What do you mean "they got the price"?

A. Well, they got the open price that is around in there.

Q. They got the regular delivery price?

A. The regular delivered price, certainly. The understood price. But nevertheless they got the tonnage, and they lost money on it when some other fellow could have made a lot of money and not gone to the poor house.

Q. When you referred to the "understood price," what did you mean?

A. Well, just—I think the understood price is a good term because you can't go to any authority to find the price. It is just the price that you pick up around the country that your competitors are making.

Q. You also went on to say that, "Mr. Stone was of the modernistic school which in recent years has put a taboo on the words like 'net price of cement as recovered at the mill.'"

11127 A. Yes.

Q. What was the reason, if you know, for putting a taboo on words like that?

11128 A. I can't give the reason, but the cement industry, in my opinion, has suffered a great deal on the fact that people don't talk net at the mill.

Q. In your opinion, is the net at the mill the biggest consideration, to the cement seller?

A. It seems to me absolutely the biggest.

Q. Do you mean that in putting a taboo on such words as the net price of cement as recovered at the mill, that some other language was to be substituted for it?

Mr. Leisure: Now, I want to object to that. Over the last series of questions, Mr. Wooden is very plainly trying to get the witness to interpret what Mr. Stone meant when he used the word "taboo". I submit that the witness cannot explain what Mr. Stone meant, and I object to this last question.

Trial Examiner Norwood: I did not understand that to be the purport. Read the question.

(Last question read.)

Mr. Leisure: You see, the witness did not use the word "taboo".

11129 Trial Examiner Norwood: Yes.

Mr. Leisure: Stone used the word.

Mr. Wooden: But the witness used the word "taboo" in his letter.

Mr. Leisure: Yes, but he is speaking of Stone having—
Mr. Wooden: Put a taboo on such words.
Mr. Leisure: Yes.
Trial Examiner Norwood: You can answer that with reference to what you understood to be included in the term.
A. I wrote that letter to Affleck (referring to paper), just before he was retired on the age limit. When I accused Mr. Stone, it was in criticism of his man—that is, of his man Stone—this is rather high falutin' stuff and modernistic idea, when you couldn't talk with him about that.
Q. What do you mean by modernistic stuff?
A. That was different from what it used to be, I mean, that's all. It is just a good many changes in the customs of the cement business.
Q. Can you tell me if such language as the net price of cement as recovered at the mill was to be tabooed, what was to be used instead of it?
A. They used a different word. It was the de-
11130 livered price, which doesn't take any consideration of your net.
Q. You said Stone was of that modernistic school. Can you name any other members of that school?
A. Well, I—
Mr. Leisure: Well, now, I object to that; it is purely calling for the witness' speculation.
Trial Examiner Norwood: I think so.
Mr. Wooden: Well—
Mr. Leisure: I object to the question.
Trial Examiner Norwood: The objection is sustained.
The Witness: Well—

By Mr. Wooden:

Q. What was the basis for you placing Mr. Stone in a modernistic school of this sort?
A. Because he was the subordinate of Affleck who was president.
Q. Yes, I know, but what ground did you have for classing Mr. Stone as being a member of that school?
A. Well, simply in my conversations with him, that we never got the net price.
Q. You mean that he always wanted to talk about delivered price?

A. Yes, that was his point, delivered.

11132 Q. Were you of the opinion that the net price recovered at the mill was the real price that you had to concern yourself with rather than the delivered price?

A. Each mill?

Q. Yes.

A. Concerned itself with the net price.

Q. And including your own?

A. Including our own.

Q. That is your personal opinion?

11133 A. That's my personal opinion.

Q. You have had railroad experience, have you not, Mr. Crapo?

A. Yes, I was in the railroad for some years.

Q. Are you, or have you been a director of some Railroad?

A. I have been a director of the Pere-Marquette; not now.

Q. During what period of time were you a director of that railroad?

A. Well—

Q. Oh, not exactly.

A. Well, from the time the Van Sweringens took it over until a couple of years ago, I think.

Q. Coming back to this letter of Mr. Affleck's, Commission's Exhibit 418-A to D, inclusive—

Mr. Zimmerman (Interposing): The date, please.

Mr. Wooden: July 29, 1936.

Mr. Zimmerman: You did refer to one of 1937.

Mr. Wooden: Yes, but it is not this one, though.

Mr. Zimmerman: All right.

By Mr. Wooden:

Q. You said that the "back yard" was also an expression that was taboo under this modernistic school of cement men's thoughts. You have explained what you meant by the "back yard"?

11134 A. Yes.

Q. Can you say why such an expression was taboo under the school represented by Mr. Stone?

A. Well, when the price gets high, why, that was the end of it, and it—of course, the higher the price the bigger the back yard, and the people that are on the outskirts of the back yard don't get as much as those that are in the center where the job is.

Q. You mean those on the outskirts don't realize the net?

A. Don't realize the net.

Q. Don't get as much net?

A. Don't realize the net.

Q. Can you say why, if you know, there was any objection to the use of the expression "the net price of cement as recovered at the mill"?

A. I think it was an expression that is not used by the sales department, because they don't know what it is.

Q. Well, what was the reason for the objection
11135 to the use of that sort of expression?

A. I think it is my—rather from the fact if I talked about the back yard I don't think they knew what I was talking about.

Q. I am talking about the other language now.

A. Oh.

Q. The "net price of cement as recovered at the mill."

A. The net price of cement—oh, I don't think they were experienced in the net price, it didn't—it was not a figure that sunk in with them.

Q. Who?

A. With the ordinary sales department of a cement company.

Q. Do you mean by that, that all the sales department had to concern itself with was simply following a formula to get certain delivered prices of certain given destinations without bothering themselves about what the net was?

11136 A. I don't think there is any formula or anything—but they would go—this is just my observation they would sell some cement on the common understood price, and that it had to have somebody else to check that to find out whether they were making any net.

Q. You mean by making any net, you mean making any profit on their net?

A. Well—

Q. Unless they sold it for nothing they would get some net?

A. Some of them do, a good many of us do, but, of course, not in that department, I mean this expression.

Q. They would have to give it away before they made no net, would they not?

A. Well, I wouldn't go quite so far as that, but after they give it away, who is going to fire them?

Q. But, I say, as long as they don't give it away, they have got some net out of it, have they not—it may not be equal to their cost?

A. Well—

Q. But it is a net return to the mill recovered at the mill?

A. Well, I would call the net the amount above cost.

Q. Oh, well, you are speaking of net profit, then?

A. No.

11137 Q. Rather than net price?

A. No profit—of course, cost is comprised of the operating expense and then you have got your overhead, and you have got other things, it falls in there somewhere.

Q. But you may have a net theoretically as low as 25 cents a barrel, isn't that correct?

A. I don't quite get that question.

Q. I mean that's all you get out of the cement. After the transportation charges are deducted from the delivered price, theoretically, that is profit, is it not, or 10 cents a barrel?

A. But we have got so many overheads and other things that have got to be checked in order to come out.

Q. Yes, in order to come out with a profit?

A. Yes.

Q. I grant you that your nets have to be higher than your costs; isn't that right?

A. But in the way that I used it, you put in every financial duty that a company ought to have not to sell below, and then if it has something left, that's profit, and it is not 25 cents.

Q. Have you had conversations with other men in the industry who expressed similar opinions to those of Mr. Stone, and that you classed as being of the same modernistic school?

11138 A. No, I can't recall any.

Q. Well, you did not have Mr. Stone alone in mind as forming a school, did you?

A. No.

Q. In fact, you referred to those who had put a taboo on such words. Whom did you have in mind besides Mr. Stone?

11139 A. And these—it is the younger men that are in departments.

Q. That are in departments?

A. That have departments and don't get access to the real profits of the—they don't see it, they think—

Q. You mean that a man in Mr. Stone's position would not know?

A. Well, I—I think I must be mad—but I don't say that he didn't have an opportunity to know, but he never reflected it to me.

Q. Well, all I want to know is if you had other members of the industry in mind as belonging to the same school that you put Mr. Stone in.

Mr. Leisure: The witness has not said he had.

Mr. Wooden: No, I am asking him if he had other men in mind.

A. I said the younger men.

By Mr. Wooden:

Q. Yes.

Trial Examiner Norwood: Did you have anyone definitely in mind?

The Witness: No.

By Mr. Wooden:

Q. Among those younger men?

A. Well, no, nobody definite. If I could answer
11140 that question by going the other way, I take it Stroh and Wabash, when he pulls his book up, why, he had every bill paid, he had no accounts payable.

Mr. Smith: You mean that he is the other extreme?

The Witness: He is the other extreme.

By Mr. Wooden:

Q. Referring to Commission's Exhibit 418-G—

A. Yes.

Q. —which is Mr. Affleck's reply to your letter of August 5, 1937, which is Commission's Exhibits 418-E and F, he suggested that you discuss things with Blain Smith, and said he was an able fellow but in all probability would learn something of value from you.

Did you ever discuss such matters with Blain Smith?

A. No, I have never discussed it with him.

Q. Did you ever discuss with Blain Smith the subject of your letter of August 5 regarding Marquette's—

A. No.

Q. —prospective entrance into Milwaukee?
A. No.
Q. Is Blain Smith one of the younger men that you refer to as belonging to that modernistic school of thought?
A. Well, I would say he is younger, but I wouldn't want to class him as—haven't talked enough with him to—in years.
11141 Q. You have talked some with him?
A. Oh—practically not at all.
Q. Did you have in mind, among younger men, the younger Mr. Young, of the Lehigh Company?
A. Well, he is younger, but I don't know as I had him in mind; I never came into contact with him.
Q. Well, I am seeking to ascertain what the basis for your general statement was that there was a modernistic school to which Mr. Stone belonged.
Mr. Leisure: Your Honor, I think we have spent enough time on that.
Trial Examiner Norwood: I think we have gone enough into that.
Mr. Leisure: I object to that question.
Trial Examiner Norwood: The objection is sustained.
Mr. Wooden: All right.

By Mr. Wooden:

Q. You refer, Mr. Crapo, to having put in a flat price in the lower Peninsula of Michigan.
A. Yes.
Q. When did you put that in?
A. Well, I think it ran through '37; I think put in the latter part of '36, and it ran through '37.
Q. Was it withdrawn after '37?
11142 A. Yes, we withdrew it after '37 because it was not an intelligent way to make a price.
Q. How?
A. You see the truck hauls were so different than the railroad hauls; when we got around, why, we didn't have the men.
Q. What was the flat price while it was in effect?
A. I have forgotten.
Q. Was it $2.15?
A. Well, the record is there; it was something like—you mean cloth?
Q. Yes.

A. $1.75 net, cement.

Q. Yes.

A. That must be pretty close, but the record would show that.

Q. As I understand it, that was the delivered price, at any station in the lower peninsula; is that right?

A. Yes, or any job site.

Mr. Smith: Let me suggest a correction; it was $1.70.

The Witness: $1.70.

Mr. Smith: Put in January 4, 1937, the lower peninsula of Michigan, $1.70, plus package.

By Mr. Wooden:

Q. The equivalent of $2.10 in cloth?

11143 A. $2.10 in cloth.

Q. Can you state the date on which it was withdrawn?

A. Well, I think it was withdrawn at the close of the year.

Q. The end of 1937?

A. Yes, right close to that time.

Q. What were the circumstances that led you to establish the flat price everywhere in the lower peninsula?

A. I think the main consideration was the Wabash-Bay City base. That was not out, but we obliterated, to a great degree, and put it in a place where nobody else can put another one on us.

Q. How was that flat price calculated?

A. Well, it was, of course, a composite, that we thought it was a—we thought the theory was all right, but in practice it didn't work out at all.

Q. A composite of what?

A. Well, of all of the prices in Michigan.

Q. Of all the delivered prices?

A. Well, of our prices in Michigan, delivered prices.

Q. Was there some composite or averaging of the freight to all the stations in Michigan?

A. Well, we tried to have it, yes; we tried to have it, and the first weakness came in it was that following 1937 we dropped out the counties of Wayne, Oakland, and McComb:

11144 Q. That Wayne County is Detroit, isn't it?

A. Yes, Wayne County, right around in Detroit, we dropped that price.

Q. Those other counties, do they include—

A. Well, that includes all the rest of the 83 or 85 of the Lower Peninsula. Then we found that over in southwestern Michigan, over around there, that our truck sales were so big, I mean the way the business was there, that that territory was just a nuisance to our competitors. I mean, in the way—some of those Indiana mills work down in the lower counties, and we didn't make any money; we lost money, and so we cut that flat price out.

Q. Did the Indiana mills who worked up into that southwestern part of the state make any complaint about the effect on them?

A. They didn't like it at all.

Q. Pardon?

A. I say they didn't like it at all, and especially Wabash.

Q. Did they say so?

A. Well, they said they didn't like it, but they were quite frank in saying that they didn't think they were going to get hit down in their quarters, after they hit us up in Bay City. Why, the shoe pinched with them down in southwestern Michigan.

11145 Q. Whom did you talk with to find out that competitors didn't like the flat price arrangement down in that territory?

A. Well, Mr. Stroh lives right in Detroit. We are pretty good friends.

Q. He talked to you about it?

A. Well, I have been telling him in a way how he had been goring us up in Bay City, and then he came back by saying we didn't help him any down in the southwestern part of the state.

Q. And was that one of the considerations for withdrawing?

A. Well, no, I don't think so. It was too general. But, of course, that was one of the reasons that caused us to withdraw; I mean to change. It is on different plants now, because we were getting a tonnage that we weren't making any money on but depriving it from Stroh, Indiana, where they had us beat. It was their backyard, not ours.

Q. Well, during the time that you had the flat price in effect in Michigan, were you pricing outside the state on the basis of basing port price plus freight?

A. It wasn't disturbed outside.

Q. In other words, you continued to quote base price plus freight outside the state?

A. The plant—the lake plant price plus freight is what we quoted.

11146 Trial Examiner Norwood: That is, you quoted on the other basis, didn't you?

The Witness: That is on the local.

Trial Examiner Norwood: On the base where you were going to ship?

The Witness: Well, we may ship, but we have got eleven or ten, really, of these lake ports, and each has got a different base. We have tried to keep inside that limit.

By Mr. Wooden:

Q. You make some sales and shipments into rail shipment territory outside of the State of Michigan, don't you?

A. Into which?

Q. Rail shipment territory like South Bend, Indiana, say?

11147 A. It is not—our rail shipments are pretty nearly disappeared.

Q. Well, that may be true now, but hasn't there been a time in comparatively recent years when your rail shipments were of some substance, of substantial quantity?

A. As you go back far enough.

Q. Well, don't you ship by rail into northern Indiana?

A. I think our tonnage in northern Indiana is very light.

Q. But what you did have was shipped on a rail basis?

A. Out of Toledo.

Q. Yes, out of Toledo, perhaps, but by rail, nevertheless?

A. Well, if the customer preferred it to a truck, why, it was fair enough.

Q. What I am getting at, is, when you sold outside the State of Michigan at the time you had the flat price in effect in Michigan—

A. Yes.

Q. —whether you just didn't apply the applicable base price plus freight to destination.

A. On the points outside of Michigan?

Q. Yes.

A. Yes, that is what we did, our own prices at our lake plant.

Q. Didn't you get into some territory where the delivered price was made by some basing point other than your own?

11148 A. Well, at Duluth it is made by the Universal.

Q. Yes.

A. That is the way Fort Peck was sold on it. Of course, that is all rail.

Q. But, for illustration, how far down into Ohio do you go from your Cleveland and Toledo silos?

A. It is on our maps on the base, but I should say half way.

Q. Half way?

A. Yes, half way.

Q. And on your Toledo base, you get over into Indiana from your Toledo base?

A. Yes, the northeast corner.

Q. When you go down to the limits of the territory in those directions from Cleveland, say, or Toledo, you get into territory where the delivered price is made by some other basing point?

A. Yes; we will run into Ironton, and I guess—well, they are quite frequent as you get down there.

Q. You get into Indiana where Limedale and Mitchell are?

A. Limedale, yes, but we don't—we avoid that if we can.

Q. Yes.

A. I mean, that is my job.

Q. When you do go into such territory, do you just adopt the delivered prices as you find them in such territory?

11149 A. In such territory.

Q. And you figure back in such territory from the delivered price to ascertain the base?

A. That is the way if we have a hazy idea of the base, but, then, most of my work is figuring from their delivered price back to our lake port to see whether there is any profit.

Q. Yes.

The only way you can tell whether you have a profit would be to compare your mill nets with your cost?

A. Well, of course, what you do, with us we manufacture at Alpena. We boat it to Toledo, for instance. We have the costs in Toledo, and then if we make a delivered price, we got to pay the price again to the destination. Those all have got to be added in.

Q. My question was whether the only way you can tell whether you are making a profit is by comparing your mill net with your costs?

A. Well, in our set of accounts, we have a mill that is separate, but then we got these various lake plants, and each one is—some cost more than others.

Q. Well, at any rate—

A. But we always figure back on the lake plant cost.

Q. And compare that lake plant cost with your net to determine whether it is profitable or not?

A. Well, to find out—in the sales—and find if there is anything left. That was the use of the word "re-
11150 cover."

Q. Has the Toledo base controlled the delivered price at any time in any part of Michigan?

A. I think the—you see, there is a base at Wyandotte.

Q. Yes.

A. That is the mill we sell for and Toledo, but I think that the Toledo base would go up across the Michigan line a little ways until they met.

Q. Has the Toledo base ever made the price at any point delivered in Michigan?

A. Well, only in those cases, but I think if you will look in our records you will find the Toledo base is higher than the Wyandotte base. It is more expensive for us to get cement to Toledo than it is to get it at Wyandotte.

Q. What territory has your Alpena base controlled the delivered price at?

A. Very limited, and especially in tonnage.

Q. Limited to part of the lower peninsula?

A. My impression is it runs up to Marquette. It did the last I know.

Q. You mean Marquette, Mich.?

A. Marquette, Mich.

11151 Q. In the Upper Peninsula?

A. Upper Peninsula. And that was a matter before the Interstate Commerce, but I mean, if the Alpena base and the Duluth base were the same, they would run

together at Marquette. Now, sometimes the bases are different, and that runs them a little further. The cheaper base runs further up.

Q. Did the Alpena base ever control any part of Wisconsin or Minnesota?

A. Well, I don't think so, no.

Q. Even going back some years?

A. I don't think it ever had any control.

Q. This Wyandotte base, do you recall that being in effect for the State of Michigan during 1932 and 1933?

Mr. Smith: You mean in the State of Michigan?

The Witness: I think he has got the records.

Mr. Wooden: Yes, in the state.

The Witness: That is where it was confined to the state?

By Mr. Wooden:

Q. Yes.

A. Well, let me look at that and I will tell you.

(The witness and Mr. Smith, of counsel, confer out of the hearing of the Court Reporter.)

The Witness: Of this I wouldn't want to be 11152 sure. That was the situation in '27 and '28 and '29, I guess.

Mr. Smith: '27 and '28, Mr. Crapo?

The Witness: '27 and '28. Is that all?

Mr. Smith: '27 and '28.

The Witness: Well, that is all right.

Mr. Smith: According to your schedule.

The Witness: When was the Toledo plant built? If you have got that, because that blotted it out.

By Mr. Wooden:

Q. Showing you Commission's Exhibit 1378, being a map of the Lower Peninsula, which Mr. MacIntyre testified was furnished by you, does it appear from that map that the Wyandotte base as of March 10, 1933, did not extend beyond the Michigan boundary line?

A. Well, I think he has also got an Ohio map. I mean, that would get—I think it was blotted out by Toledo.

Q. Over in the western part—I don't know whether that would be Ohio down here or not (indicating).

A. Well, Indiana. Indiana. That is, as I get it—what does it read? That is where they got in with more net on that price (indicating). I mean the freight rate.

Q. Yes.

A. And then that is Buffington (indicating). And then what is this color?

11153 Q. Purple there.

A. Purple? Well, that is controlled by Saginaw. That is out of the base over there.

Q. No, that is Wyandotte, isn't it?

A. No, this is Wyandotte down here, isn't it? (Indicating)

Trial Examiner Norwood: Mention the localities when you refer to the map, please. The record doesn't show what you are talking about.

By Mr. Wooden:

Q. The color is a sort of heliotrope or purple controlled by Wyandotte, and that takes in this territory here (indicating)?

A. Yes.

Q. And this is controlled by Saginaw, and that is controlled by Alpena (indicating).

A. Oh, that?

Q. Yes. What I want to know is whether at that time the Wyandotte base was not confined to the State of Michigan.

A. Well, I can't answer that definitely.

Q. Do you recall any of the circumstances connected with the bidding on the Indiana State Highway Commission—

A. No.

Q. —bid in 1933?

A. No.

Q. Which resulted in Aetna getting a large quan-

11154 tity of business over there in Indiana?

A. No, I don't think we even made a bid. I know nothing.

Q. Isn't it a fact that if the Wyandotte base had been used plus freight, from Wyandotte, that it would have made the lowest delivered price in territories outside of Michigan, some territories outside of Michigan?

A. I think that is quite likely.

Q. Why, then was the application of the Wyandotte base limited to the State of Michigan?

A. Because it would go too far into Ohio, where we had no business.

Q. Well, even if it went into Ohio, how about Indiana? Did you have some business in Indiana?

A. Well, very little, but when we built the Toledo plant, why, then that case took care of that country in a general way.

Q. Did other Michigan manufacturers also cease to use the Wyandotte base at the Michigan boundary line?

A. I rather think they followed, but I—

Q. You mean they did just what you did?

A. I think they followed that ruling of ours.

Q. Of not having the Wyandotte base run beyond the state line?

A. Not run beyond the state line.

Q. Did you announce to the trade that the Wyan-
11155 dotte base did not apply outside the state?

A. We did, yes.

Q. You mean announced it to your customers?

A. Customers, yes.

11156

Cleveland, Ohio,
November 17, 1938.

11159 WILLIAM JAMES JENNINGS, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

At present I am retired on an allowance or pension from the Southwestern Portland Cement Company and
11160 have been retired for a year. Prior to that I was manager of the Southwestern at Osborn, Ohio, since about 1929 or 1930. I was assistant manager and then manager. I cannot remember the dates exactly when I was assistant manager, but I think 1928, 1929 and 1930 is
11161 about right. My duties as manager were that I had supervision of the plant. When I was assistant manager we had a salesmanager and I did not take very much interest in sales. When I was manager I had more or less to do with the sales. I had a salesmanager, Charles Clugston, under me for a very short period. Then he resigned and went with another company and we did not have any salesmanager after that.

Q. (Showing paper to witness) I am showing you, Mr.

Jennings, papers which are in evidence in this proceeding as Commission's Exhibit 1270-B to J, inclusive, and calling your attention to the last page, which is J of that exhibit. Are those your initials and your handwriting at the bottom of that page?

A. Yes, sir.

Q. All right.

11162 A. Yes, sir.

Q. And is that the letter which you wrote as of the time indicated to Mr. Merrill, an official of your company in Los Angeles?

A. I think so; yes, sir.

Q. Did you send a copy of that letter or a duplicate of it to any other official of the Southwestern Company?

A. No, sir.

Q. Calling your attention in that connection to the two paragraphs which appear above your handwriting, handwritten initials, you say "Now, Frank, please read this letter carefully."

Who was Frank?

A. That is Mr. F. H. Powell.

Q. Was he president of the Southwestern Company?

A. Yes, sir.

Q. How do you account for the fact that the letter was addressed to Mr. Merrill and runs right along until that postscript and it switches off to address Mr. Powell by the name "Frank"?

A. Mr. Powell—Mr. Merrill was my immediate—over me, and Frank Powell was the president. He looked after the employing of men mostly. He took care of the personnel a great deal.

Q. That is why you were writing him about the

11163 employment of a salesmanager?

A. Yes, sir.

Q. You were advising against the employment of a salesmanager at the time, were you not?

A. Well, things were on the down grade, and I thought we could get the pick of better men later on.

Q. But you were advising against the employment of a sales manager at that time?

A. At that time, yes.

Q. Now, I call your attention to the fact that the Exhibit 1270-B to J is dated Friday, January 10, 1929.

A. Yes.

Q. If the calendar should show that Friday, January 10, was in 1930 instead of 1929, would you say that that was an error in the way it appears in the paper (indicating)?

A. I think probably so.

Mr. Leisure: Might it not also be Thursday instead of Friday?

Mr. Wooden: Well, it says Friday, that is all.

Mr. McFadden: It says '29.

Mr. Leisure: It also says '29.

Mr. Wooden: It is a matter almost for judicial notice, that at the turn of the year people have a tendency to keep on re-using the old date.

The Witness: Yes.

11164 Mr. Zimmerman: Even for a whole year. I will tell you, we might stipulate that there is a mistake there somewhere, either in the calendar or the day of the week or the year, or something.

Trial Examiner Norwood: Let's have the witness' best judgment about what the correct date is.

Mr. Wooden: He expressed his judgment, but I will follow it further.

By Mr. Wooden:

Q. Mr. Jennings, in view of the statements made in the communication which you initialed at the end, Exhibit 1270-B to J, and dealing with the meeting of the Institute, Cement Institute, which you attended, would that help you to state whether it was January, 1929, or January, 1930?

11165 A. Well, now, you will have to excuse me. It is too long ago. I can't remember the incident.

Q. Do you remember attending the meeting that is described?

A. I remember, yes, but it is a long time ago, and I can't—

Q. There is one paragraph in it that I wish to ask you about. It is in 1270-C, the second page, in which you say that: "Before leaving the hotel Mr. Schmutz came to me." Who was Mr. Schmutz?

A. Mr. Schmutz was president of the Bessemer Portland Cement Company.

11167 Q. (Showing paper to witness) I am now showing you, Mr. Jennings, Commission's Exhibit 1270-K

and L, a letter on the letterhead of the Southwestern Portland Cement Company at Osborn, addressed to Mr. Merrill, and bearing at the bottom the signature of William J. Jennings—the initials "E. G." Is that signature in your handwriting?

A. No, it is not.

Q. Can you say whose it is?

A. No, I can't say positively, but evidently if it is initials "E. G." that's Miss Elisabeth Gilliland; she was my secretary at the time.

Q. Were you accustomed to authorize her to sign your name to letters which you prepared?

A. Well, evidently I was called away on—before these letters were typewritten I was called away on other business and I told her just to sign the letters and send them on.

Q. You say "these letters." You are talking about this particularly?

A. Well, I am talking about this particular letter—I might have spoken about others.

Q. The other one you signed, yourself?

A. Generally, I signed them, myself.

Q. But the other one—

A. Yes.

Q. —Commission's Exhibit 1270-B to J, those 11168 were initialed in your handwriting?

A. Yes.

Q. The letter which is Commission's Exhibit 1270-K—K and L—I don't know why it should be two letters, it is one sheet—was that dictated by you to your secretary (showing paper to witness)?

A. Well, now—it is a rather short time to hand me a letter—

Q. All right, look at it.

A. —and say—it would be very difficult for me to say, but apparently it is one of the letters that—(witness examines paper)—apparently that is one of my letters, dictated by me.

11169 Q. Now, calling your attention to the date of that letter, April 29, 1930—

A. Yes.

Q. —does that help you in forming a judgment as to whether the other letter which, on its face, reads: "January 10, 1929" was really written in 1930?

A. I am afraid you will have to excuse me. It is a detail I couldn't remember at the present time.

Trial Examiner Norwood: Well, take your time and examine those papers.

The Witness: Probably it was—

Trial Examiner Norwood: —and give us your judgment about it.

A. It probably was a mistake. I am not—(examining papers)—it looks to me as if it was just a mistake in dictating, in typewriting.

Q. The date 1929?

A. Yes.

Trial Examiner Norwood: You think the date should be 1930?

The Witness: Yes, it probably should have been.

Q. Mr. Jennings, when you were manager there at Osborn did you subscribe for and use the freight rate books published by the Cement Institute?

A. Why, I—yes, yes, we had the rate book of the Cement Institute. We had our own. We had our
11170 own traffic manager, and we made up our own, but after the Cement Institute was operating, I think we used their—freight book.

Q. Why did you use the Cement Institute freight books rather than continue to use your own?

A. Well, there was constant changes being made in the—in the freight rates, naturally they are always being changed, and they were doing that work, and it made it easier for us to—

Q. Did the desire to use the same rate that other mills were using to given destinations enter into it?

Mr. Leisure: Now, I object to that as leading. You may ask the witness his reasons for doing it, but you are continually leading him on remote instances in the hope of getting an answer, and I think that is improper examination, and I object.

Trial Examiner Norwood: I think—

Mr. Wooden: I do not see anything leading about it, as far as that is concerned.

Trial Examiner Norwood: The objection is overruled.

Mr. Wooden: It does not suggest the answer I expect or want.

A. We were paying for this, and we used it,
11171 because we thought that we should get our money's

worth. That's the way I figured it, from a business standpoint.

Trial Examiner Norwood: You did not answer the question.

Mr. Wooden: That is not an answer to the question. Answer the question yes or no. Read the question, please.

(Last question read.)

Mr. Leisure: Now, I want to add that there is nothing on the record that others were using those same rates, so that counsel is not only asking him a leading question, but he is in his question inserting things not in the record, and asking for an affirmative answer.

11172 Mr. Wooden: There is an abundance of evidence in the record that the Institute put out these freight rate books, and that the members used them.

Trial Examiner Norwood: I shall let him answer the question.

The objection is overruled.

Do you wish the question read again?

Mr. Wooden: Read the question, please.

(Last question re-read as follows:

"Q. Did the desire to use the same freight that other mills were using to given destinations enter into it?")

A. Not entirely, no—

By Mr. Wooden:

Q. No? To some extent, did it?

A. Not entirely, it might have been subconsciously, it might have been, but we used it because we were paying for that service, and we wanted to—

Q. I will be a little more specific:

Did the desire to figure the same destination prices by using the same freight that your competitor was using enter into your use of the freight rate books at the Institute?

A. Well, naturally, we wanted to have the right price, to quote the right prices, that was our business.

11173 Q. In other words, you wanted to have the same destination price as your competitors?

A. Well, I suppose so; we didn't want to be higher because we didn't want to lose the business.

Q. And you didn't want to be lower, either?

A. We didn't want to be lower.

Mr. Wooden: All right, that is all.
Trial Examiner Norwood: Examine him.
Mr. Leisure: I have no questions.
Mr. Wooden: All right.
The Witness: Excused?

11174 S. T. CRAPO, a witness previously called by the Commission, and having been previously duly sworn, was further examined and testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Crapo, calling your attention to Commission's Exhibit 418-A to D, inclusive, which you looked at yesterday, I believe you sent a copy of the letter to Mr. Young. Is that Mr. Young of the Lehigh Company?

A. Yes; that is Mr. Young of the Lehigh Company.

Q. What was your purpose in sending him a copy of that letter?

A. I wanted him to get the letter in order to understand where the shoe was pinching Huron.

Q. Well, did Lehigh have customers in that territory where the shoe was pinching on Huron?

A. In Michigan, I think probably no customers, but customers in Milwaukee.

Q. In other words, it was because of your ref-
11175 erence to Milwaukee that you sent Mr. Young a copy?

A. I might—I think the real reason is that Mr. Young is a very powerful personality in the cement business.

Q. Well, what did you expect to accomplish by sending him a copy of the letter that you wrote to Mr. Affleck?

A. Why, I hoped that he would read it. He never acknowledged it.

Q. He never answered it?

A. Never answered it.

Q. Did you ever talk to him about it or he talk to you about it?

A. I asked him if he had received it, and he said yes. Then I said, "Why didn't you acknowledge it?" and he said it was a copy, "and I didn't think it deserved an answer."

Q. Did you talk with Mr. Young about the contents of it?

A. No, not at all.

Q. Referring to Commission's Exhibit 418-C, which is the third page of your letter to Mr. Affleck of July 29, 1936, you say: "It would seem that some disinterested Big Brother in the cement industry, such a one as Mr. Lober might smooth this seeming impasse up, but no such Big Brother has yet appeared."

Who was the Mr. Lober you referred to?

A. Well, he was in Pennsylvania; I think it was
11176 the Vulcanite. Well, I think he was president.

Q. Why did you refer to Mr. Lober as a man who might possibly work that impasse out?

A. Mr. Lober is dead at this time.

Q. Yes; but at that time?

A. A man like Lober I think might have. Mr. Lober was a very fair wise man in the cement business, and he was an excellent man to get differences of opinion straightened up.

Q. Had he functioned in that capacity, so far as you know?

A. Well, that is a long while ago,—Lober. That was my understanding of him in the industry.

11177 Q. What do you mean by that was your understanding in the industry?

A. Well, I mean, if you would get provoked about something and didn't want to do some foolish thing, you would go and talk to Lober and get good advice.

Q. Was he recognized by the industry as that sort of a man?

A. I think I am quite correct in saying that he was no official—

Q. A trouble shooter, would you say?

A. No, no. He was just like—I can't make it much clearer, but there are certain men, when you know you are going to get mad enough to do something foolish, that it is a good plan to talk with them.

Q. Had you ever talked with Mr. Lober, or sought his help in ironing out situations of any kind?

A. We were too far away to get any detail.

Q. Did he function in that way in the territory where you were engaged?

A. Well, the cement industry of necessity, like other industries, have meetings, conventions.

Q. Yes.

A. That is when people meet together, and that is where I saw Mr. Lober. He was down at most of these meetings, which were in Chicago, and that is where I placed my opinion on him. He was a leader, a conciliatory leader.

11178 Q. What sort of situations did he conciliate or attempt to conciliate?

A. I think the situations were largely in trying to get a common ground for different individuals to see the thing in the same way.

Q. See what things in the same way?

A. Well, this goes a long way back, but we had a controversy, or, that is, a difference of opinion with the Lehigh Valley freight rates into Detroit as against the Detroit freight rates back into the East.

Q. Yes.

A. And Michigan men, when it come up, we finally decided that we would go to the Interstate Commerce and claim discrimination, which we did. And the Interstate Commerce ruled—it was very short—that we proved that there was discrimination because they charged less coming West than they did going East, and threw it back to the eastern railroads to eliminate the discrimination, not saying whether the rate went up or down, and the eastern roads decided to put it up, and, naturally, those people down there, I think Mr. Lober was—

Trial Examiner Norwood: I think you are going too far into that.

The Witness: Well, it is too far, but he has pressed me on something. It is the only thing I know.

By Mr. Wooden:

11179 Q. How far back was that case you referred to?

A. Oh, that was a long ways back.

Q. Well, was that back in the days, or were there days back there within your knowledge when the Michigan price was based on Lehigh Valley price?

A. No, the only thing I know, it was based on Buffington, but Lehigh Valley was coming into—

Q. Yes. But I am going away back now to the early days of your experience. 1907, was that?

A. Well, before, but that was just when the—that is a little before, but when it at last got around with the work-

ing on the cement rock, the prices were largely based on Lehigh Valley going away from the west.

Q. That is what I am trying to ascertain.

A. Yes.

Q. Whether in the early days of your experience the delivered prices in Michigan were the sum of the Lehigh Valley base price plus freight out there.

A. That is before my time a little, but I think it is true.

Q. Do you know it as a matter of history?

A. Purely as a matter of history.

Q. Was there a time in your direct experience when the mills in Michigan added the freight from the Lehigh Valley in order to determine their Michigan price?

11180 A. I have no knowledge of that,—that is, of any accuracy.

Q. Do you know of any such thing having existed as a matter of history?

A. Well—

Mr. Leisure: I object to the hearsay part of this. The witness has done his best to answer Mr. Wooden's questions, and I don't think he should be pressed.

Trial Examiner Norwood: You need not state anything that you do not definitely know about the custom of the trade.

The Witness:—Well, I don't know whether the history is right before I was in the business.

Mr. Wooden: Well, Your Honor, of course I am not going to press the question—and this is not even on the record—but there is a history to every business just like there is a history of every country.

Trial Examiner Norwood: But this man can't give it unless he says he knows it.

Mr. Wooden: Well, it is a matter of record. I won't press it any further.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: Go ahead.

11181 Q. Referring again, Mr. Crapo, to this Commission's Exhibit 418-C, the third page of your letter to Mr. Affleck, on July 29, 1936, referring to Milwaukee, you said:

"Some time ago a base at Milwaukee came into being which seems to be a reasonable compromise among the

mills serving this territory. The Milwaukee base was and is $1.75."

Was there some expression made by any of the mills in favor of a higher price than $1.75 at Milwaukee?

A. None that I know of. I used the words, "A base has come into being."

Q. Yes, you used the word "compromise".

A. All cases were like Topsy, they were just born.

Q. You used the word "compromise", too.

A. Well, naturally—

Q. I was wondering between whom the compromise was reached.

A. Between the—I mean it came to an adjustment between the people who were doing business in Milwaukee.

Q. You went on to say that:

"One of the conditions attached thereto was the permissible use of trucks over a large number of counties in eastern Wisconsin but the destination of the trucks is limited solely to the dealers' warehouse."

What is your knowledge based on with reference 11182 to the conditions attached to that compromise?

A. I think that just proved—the peculiar part of that was that the destination was confined to a dealer's warehouse, not jobs.

Q. Was that peculiar to the Milwaukee—

A. Well—

Q. —territory?

A. It is a little unusual.

Q. You spoke yesterday of certain counties in Wisconsin being the area to which trucking in Wisconsin or from Milwaukee was confined. Can you name those counties?

A. Well, I don't know Wisconsin well enough.

Q. (handing paper to witness) Calling your attention now to Commission's Exhibits 417-AA and BB and CC and DD—have you seen that letter?

A. No, I don't—(witness examines papers)—wait a moment.

Q. A letter addressed to Mr. Rooney.

A. No.

Q. From Mr. F. R. Johnson of Aetna.

A. No, I haven't seen that.

Q. Did you see the various documents that were produced from the files of your company under subpoena duces tecum before they were submitted—

A. You mean from the sales department?
Q. Yes.
A. I only saw the ones I submitted.
11183 Q. Well, were some submitted from the sales department that you did not see at the time that they were submitted, or before they were submitted?
A. The only documents that I saw were the ones that I brought down.
Q. Well, is this one of them, then (showing paper to witness marked Commission's Exhibit 417-A)?
A. I don't know; don't think so; I—I—that was not addressed to me.
Q. Yes, addressed to Mr. Rooney.
A. Well, Rooney?
Q. All right.
A. I guess he brought it down.
Mr. Wooden: Mr. Smith, would you be willing to stipulate that the various documents which you submitted in response to the subpoena duces tecum served on Huron Company are the letters from the files of that company and included file copies of outgoing letters and the originals of letters received by the company in the ordinary course of mail?
Mr. Smith: Will you read that statement again?
(Statement by Mr. Wooden read to Mr. Smith.)
Mr. Wooden: And, further, that those documents are what they purport to be?
Mr. Smith: I think so, except that I recall there
11184 were two or three documents or letters in there, the origin of which we do not know; but I don't think that applies to any of the originals or carbon copies that appear on their face to be originals or carbon copies of letters either addressed to or sent by the Huron Company?
Mr. Wooden: I have reference to exhibits.
Mr. Smith: Limited to the ones you want.
Mr. Wooden: 417-A to 425-C, inclusive.
Mr. Smith: Just let me run through them.
Mr. Wooden: Yes (handing file of exhibits to Mr. Smith).
(Mr. Smith examines the file of exhibits.)
Mr. Smith: Twenty-five is the last one, you say?
Mr. Wooden: 425-D.
Mr. Smith: 425-D.

Those are all letters and documents produced by us in response to the subpoena, and came from the files of the Huron Portland Cement, and if the officers of the cement company to whom they were addressed or by whom these were initialed were here to testify they would admit the authenticity of those documents.

Mr. Wooden: Yes.

Mr. Smith: There is, however, amongst them, one paper—

11185 Mr. Wooden: I want to ask about that.

Mr. Smith: 417-N that was found in the files that had on it no identification, and no means by whom we could find to whom it was sent, or by whom it was made.

Mr. Wooden: Yes.

Mr. Smith: And that was one—I think there are one or two others somewhere else in the record—but that was what I referred to when I said we—we just found it in the files and produced it.

Mr. Wooden: You mean—

Mr. Smith: Because it bore on the subject covered by the subpoena.

Mr. Wooden: You mean there are duplicates of that 417-N elsewhere in the record?

Mr. Smith: No, I mean, as I recall it, there was one or two other documents, the source of which we could not identify, like this.

Mr. Wooden: Yes.

Mr. Smith: But this is the copy we found in the files.

Mr. Wooden: I see.

Mr. Smith: Referring to a subject covered by the subpoena, and without knowing its source we produced it.

Mr. Wooden: Do you mean to include in your

11186 statement, Mr. Smith, that so far as these papers comprehended in Commission's Exhibits 417-A to 425-D, that so far as they represent, or appear to represent outgoing letters, they are the file copies of such outgoing letters?

Mr. Smith: Yes, sir.

Mr. Wooden: And so far as originals—they appear to be originals of incoming letters—they are the letters that were received by the Huron Company?

Mr. Smith: That is right; that is my understanding.

Mr. Wooden: All right.

By Mr. Wooden:

Q. Referring, Mr. Crapo, to Commission's Exhibits 417-AA to DD, Mr. Johnson, the writer of the letter, says: "I am including a map which we have abided by for a long, long time. The counties outside—inside of the red line are according to the meeting of the cement mills, this is the territory in which trucking is to be allowed, but not west of the red line of the counties so designated."

11187 That relates to Wisconsin.

Do you have or did you have such a map as that?

Mr. Smith: Is that a letter addressed to Mr. Crapo?

The Witness: No.

Mr. Wooden: Rooney.

The Witness: It is a letter addressed to Mr. Rooney.

A. I don't remember having any such map.

Q. You have had no map which outlines or indicates the counties in Wisconsin or the territory in Wisconsin, over which trucking is to be confined?

A. We have in Michigan, and I think in Wisconsin, the Huron's limit to which we truck; how that was done, I don't know.

Q. Can you state whether or not you ever received such a map from Mr. Johnson?

A. No, I never did.

11188 Mr. Wooden: Now, it appears, your Honor, from this exhibit, that Mr. Johnson was quoting a letter which he sent to Mr. Stone of Universal Atlas, and which he says was forwarded to Mr. Stone on June 12. I would like to serve notice for the production of that letter to Mr. Stone dated June 12, 1935, and the maps which are referred to in it.

Trial Examiner Norwood: Counsel will take notice.

Mr. Smith: What is it?

Mr. Wooden: Covering the Wisconsin area.

Mr. Smith: Is that notice—

Mr. Wooden: In Milwaukee.

Mr. Smith: Who was that notice served on?

Mr. Wooden: Well, I intended it for counsel for the Institute, and for the Universal Atlas Company.

I would like to add to it, however, that if such a map is available in the files of the Huron Portland Cement Company, I should also like to have that produced.

Mr. Smith: I don't recall any.

Mr. Conaghan: We will make a search, Mr. Wooden,

and if such a map or such a letter can be found, they will be furnished promptly.

Mr. Wooden: Thank you.

11189 By Mr. Wooden:

Q. Referring to Exhibit 417-FF, which is a file copy of Mr. Rooney's letter to Mr. Johnson dated August 2, 1935, and in the upper left-hand corner the words "S. T. Crapo", can you say in whose handwriting that is?

A. Well, I think that is Rooney's.

Q. Does that mean that the letter was brought to your attention?

A. Well, if it was—I don't know why it wasn't in my file. Of course, I may have sent it back. I don't remember the letter, but I—

Q. Was it Mr. Rooney's custom to refer to you proposed or drafts of outgoing letters before being sent?

A. Oh, no.

Q. Or after they were sent, did he?

A. Well, frequently, sometimes send copies, he asked, but that letter is evidently showing an inclination to be friendly with a competitor.

Q. Now, referring—

A. Not very successful.

Q. Now, referring in the same connection to Exhibit 417-EE, which is Mr. Johnson's letter to Huron for the attention of Mr. Rooney—that also has the words written in pencil "S. T. Crapo to note. R."—is that Mr. Rooney's notation?

A. It is undoubtedly Mr. Rooney's notation, but

11190 I must have sent it back.

Q. Is that Mr. Rooney's handwriting?

A. I wouldn't want—I think so. It may be his. In this letter, why, Johnson says he cooperated 100% with us.

Q. Yes.

A. That was a good statement, but I don't know about the fact.

Q. As a matter of fact, there was some difficulty over Aetna's policy, was there not, that finally led to the change in the management there?

A. Well, in a broad way, Aetna was there when we started, and I don't think Aetna and Huron are ever in agreement in any principle of the business at any time.

Q. Referring to Exhibit 909, which is a copy of your letter, I believe, to Mr. Johnson of July 9, 1936. Do you say there: "I told Lingemann at the time of our talk that you were scheduled to meet within a day or two for the east," or something like that.

What was the occasion for your talk with Mr. Lingemann?

A. As I remember, it isn't stated here, but it was a question of the counties in which you give the customer the option to a rail or truck.

Q. Yes.

A. Now, of course, that is just mechanical. You
11191 are foolish to encumber yourself with putting in counties to which—or to agree to where the truck can't take it as least as cheap as a railroad.

Q. Yes.

A. Now, everybody has got different ideas and I don't think that Aetna and ourself ever could agree on territory; I mean, not agree, I mean even cooperation. Their territory is always different from ours, but it was not a trivial matter. If they wanted to truck it up at a loss, why—

Q. Do I understand that is what you were talking with Lingemann about as referred to in that letter?

11192 A. That is my impression as near as I can—then I was—well, Lingemann called me up on something, and I said I was going down to New Haven to a re-union, and that I would stop and see Johnson on the way back from Boston. And then I heard that—about this cyclone, as you may call it, about the truck—about this Wabash—

Q. Bay City base?

A. Bay City base, or the things that came, and then I came around, I don't think—

Q. Is that what you meant by "cyclone"?

A. Well, that is what I meant by "cyclone." I think that is a fair name for those kind of things. Then my excuse, which is worded here: "It was my belief that you would be so busy on this matter that it was not a favorable time to go to Boston and discuss the general situation."

Q. So you did not see Mr. Johnson when you were in the East on that occasion?

A. I did not.

Q. Did you ever discuss that situation with Mr. Johnson?

A. Why every time I met Johnson we discussed the Michigan situation.

Q. Did you discuss it with him about that time, in Michigan or elsewhere?

A. Why, if I ran across Johnson, why, we would always talk about Michigan cement matters.

11193 Q. You remember Mr. Johnson coming out there about July, 1936, to Detroit?

A. Johnson came out to Detroit a number of times and never called on me. Now, just which one—

Q. Did you see him in July, 1936, when he came out?

A. Can you connect that up with what incident was going on? I didn't see him at all in quieting of this Bay City, the original Bay City, or that trouble with Wabash at all.

Q. Did you see him in any connection or talk to him about any matters in July, 1936?

A. I don't—let's see. This was recently, wasn't it? '36? When did he let Cree go?

Q. In that same month.

A. Oh, I didn't see him at that time at all. That was his business.

Q. Did you talk with Mr. Johnson at any time about the failure of his management, Mr. Lingemann or Mr. Cree to carry out the instructions or the assurances that Mr. Johnson had made?

A. Many times.

Q. And had you talked with Mr. Johnson about such matters during the several months preceding July, 1936?

A. Well, I would have—I would have seen him in Boston, but if I was down—I would have talked with him every time I saw him about—

11194 Q. I am not asking what you would have done but what you did do.

A. I can't say whether I saw him in 1936 or not.

Q. These exhibits that Mr. Smith has stipulated are authentic, show a course of correspondence, do they not, between your company and Mr. Johnson about various matters of trade policy and of proposed cooperation?

Mr. Smith: They show what they show, I suppose.

Mr. Wooden: Yes, but I am just asking the witness.

The Witness: The correspondence with Aetna was not voluminous; it may be somewhat acrimonious, but there

were letters went on in this regard to the conduct of business in Michigan.

By Mr. Wooden:

Q. I am asking you if you discussed with Mr. Johnson at any time the failure of Mr. Lingemann or Mr. Cree to carry out the cooperative attitude which Mr. Johnson assured you would be followed?

A. Every time I met with Johnson I discussed that question with him.

Q. Did you have any occasion to discuss similar matters with him after Mr. Lingemann and Mr. Cree left the service of the Aetna Company?

A. I haven't happened to see Johnson.

Q. Have you or Mr. Rooney, to your knowledge, had occasion to correspond with Mr. Johnson about such
11195 matters since that time?

A. I haven't sent any, but that was what Rooney was hired for, to keep in touch with—undoubtedly he has had some.

Q. Keep in touch with what?

A. Well, with all—

Q. With the competitors?

A. Yes. You can't take care of your customers without you at least having some relations with your competitors.

Q. Referring to Exhibit 418-A, which is your letter to Mr. Affleck of July 29, 1936, you testified yesterday that you had talked with Mr. Stone about his going over to Detroit, and that his visit had resulted in quieting the situation over there somewhat.

A. Where do I say that?

Q. You don't in your letter, but I am referring to your testimony yesterday about your talk with Mr. Stone.

Mr. Smith: Let's be sure that that is a correct statement.

Mr. Wooden: All right.

By Mr. Wooden:

Q. Is that correct, Mr. Crapo?

A. I never talked with Mr. Stone in my recollection except when Affleck called him into Affleck's office.

Q. Do you recall your testimony yesterday to the
11196 effect that you stated—

A. Well, I may have not understood, got the answer right.

Mr. Zimmerman: Do you have the page in mind at all, Mr. Wooden?

Mr. Wooden: No, I am just speaking entirely from memory.

Mr. Smith: I don't recall that he said anything about talking to Mr. Stone.

Mr. Wooden: Yes, I am quite sure he did.

The Witness: I would like to say that I never saw Stone directly.

By Mr. Wooden:

Q. You mean you saw him when Affleck called him in?

A. Called him in.

Q. And did he call him in at the time you were referring to in your testimony yesterday?

A. He was in at the interview, that preceded this letter.

Q. Yes.

A. In which there was a complaint, as he put it, of the Universal that the Huron had Fort Peck's Government contract.

Q. Now, how long prior to this letter of yours of July 29, 1936, would you say it was that you had that talk with Mr. Stone?

A. I think—for me to get back the—the Fort Peck contract was signed the latter part of June. On the next occasion that I had to go to Chicago, which was in 11197 the latter part—I think it is the fourth Friday of the month—I went around to see Affleck, and Stone was—came down at that time.

Q. Well, was Mr. Stone in on the talk that you refer to with Mr. Affleck on Friday, July 24th?

A. That's it, it is July 24th.

Q. Well—

A. That is not the whole of it, that was brought down —my only reference.

Q. How long before the date of that talk, July 24th, was it that Mr. Stone had been over to Detroit?

A. Oh, I don't know. I never saw Mr. Stone in Detroit.

Q. No, but he told you about having been over there?

A. Well, was there anything in that letter about that?

Q. No, I am referring to your testimony of yesterday, as I recall it.

A. No, well, I—Stone came over on an entirely different occasion, and that was the Wabash-Aetna.

Q. You mean came over to Detroit?
A. Came over to Detroit.
Q. Yes.
A. I didn't know he was there, I wasn't asked at the meeting, this had nothing to do with that at all, this was—
Q. I am just trying to—

Mr. Leisure: If the Court pleases, if the witness
11198 did not know he was there, and did not know anything about it, I am moving at this time to have the testimony stricken out as hearsay, because it now develops the witness did not see Mr. Stone at Detroit at all.

By Mr. Wooden:

Q. What is the basis of your information or statement that Mr. Stone came over to Detroit about the Aetna-Wabash matter?
A. Well, my impression, that that was an incident that came out when I did see him, that he had been there; that's all I know.
Q. About that?
A. About—yes—
11200 Q. Did Mr. Stone tell you that he had been over to Detroit about the Aetna-Wabash matter?
A. I don't think that Stone made that statement to me, but I think in this—in this question, I mean this general situation came up.
Q. Yes.
A. And—I think generally understood that—I got the impression he was there, and I think that's a fact.
Trial Examiner Norwood: Well, can you testify that Mr. Stone told you he was there?
The Witness: Well, I—I—I would rather not.
Mr. Leisure: May I renew my motion, Your Honor?
Trial Examiner Norwood: The motion is allowed.

By Mr. Wooden:

Q. I will ask you this, Mr. Crapo: Did you get the
11201 impression from your talk with Mr. Stone on that occasion that he had been over to Detroit on the Aetna-Wabash dispute?
Mr. Leisure: I object to that. The witness has already answered three times, answering both the Examiner and Mr. Wooden, that he was not willing to say that Mr. Stone had told him that he had been there, this being the same question in another form.

Mr. Wooden: No.

Mr. Leisure: Whether or not he gained the impression from Mr. Stone.

Trial Examiner Norwood: The objection is overruled. Let us get all the information we can on this.

Read the question.

(Last question read as follows: "Q. I will ask you this, Mr. Crapo: Did you get the impression from your talk with Mr. Stone on that occasion that he had been over to Detroit on the Aetna-Wabash dispute?").

A. I got the impression from the talk, but I don't know whether I got it from Stone, or somebody else.

By Mr. Wooden:

Q. Well, what talk do you refer to, then?

A. The talk of the general situation that was—I mean this was an incident.

11202 Trial Examiner Norwood: With whom?

The Witness: With Mr. Affleck and Mr. Stone. My talk—the impression I took away from it was that Stone had been in Detroit, and that's all I know.

Trial Examiner Norwood: In view of this latter testimony, why, that previous motion—what page was it I said?

11203 Mr. Zimmerman: It begins at the bottom of page 11001, I believe.

Trial Examiner Norwood: Beginning at the top of page 11102, in view of this latter information that motion must be allowed, also.

Mr. Withrow: The motion to strike is at page 11102.

Mr. Leisure: My motion started at page 11102.

Mr. Wooden: Do you mean the motion is allowed as to the witness' statement that he got the impression from his talk with Mr. Stone and Mr. Affleck that Mr. Stone had been over at Detroit on the Aetna-Wabash matter?

Trial Examiner Norwood: The statement was—(referring to official record)—the statement that this witness made regarding Mr. Stone's activities in coming over and settling—

Mr. Wooden: Is it not "quieting the situation", the words used?

Trial Examiner Norwood: Yes, yes,—in which the witness on page 11101 characterized as hearsay, and which is the statement—

Mr. Paulson: It appears that counsel in order to clarify—

Trial Examiner Norwood: On page 11104, lines
11204 1 and 2, would indicate was not hearsay.

Mr. Wooden: It now appears just what it was.

Trial Examiner Norwood: But which the statement he has just made would indicate that it was hearsay.

Mr. Wooden: The statement he just made, your Honor, makes it a part of the conversation of Mr. Stone and Mr. Affleck.

Trial Examiner Norwood: Well, he stated over there on page 11104 that Mr. Stone did say so. Now he has just stated that it was his impression.

Mr. Zimmerman: That is all.

Mr. Wooden: That is all right.

Trial Examiner Noorwood: That he got it, and he can't say that Mr. Stone said so. In order to remove it from the realm of hearsay, he must testify that Mr. Stone did say so.

Mr. Paulson: I think counsel's motion is too vague and indefinite.

Trial Examiner Norwood: Well, it is, but we have rendered it.

Mr. Zimmerman: On page 11104 all he says is that Mr. Stone said he had been over there; he did not say what he had been over about, but he said he had been over there.

11205 Mr. Wooden: Now, he amplifies or supplements it. Why cannot he do that?

Trial Examiner Norwood. As the record stands, the motions are allowed, and I will see if we can bring out some further testimony, of documentary or otherwise, why, we will consider it.

Mr. Wooden: I will note an exception.

Trial Examiner Norwood: The Counsel for the Commission has an exception, and he may take that up to the Commission and thrash it out.

11206 Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Mr. Crapo, on page 11102 of the transcript pertaining to your testimony of yesterday, you answered that there were three or four came over from Chicago to Detroit. Will you say—

A. Well, what is that?

Mr. Smith: I don't quote see that.

The Witness: But what was I talking about?

Mr. Leisure: This part all has been stricken, Mr. Wooden, that you are referring to.

Trial Examiner Norwood: Well, he can—

The Witness: That is the one I called the quieting of the—it may be something else.

By Mr. Wooden:

Q. Well, you said at least one came from Chicago, but there were three or four without saying where the three or four were from.

A. Where did I say there were three or four?

(Mr. Wooden indicates the transcript to the witness.)

Mr. Smith: Where is the previous connection?

The Witness: Yes, but one came from Chicago.

Trial Examiner Norwood: It is repeated on 11102 at lines 11 and 12.

11207 The Witness: That is all right. From Chicago; at least one came from Chicago.

Came to Detroit?

By Mr. Wooden:

Q. Yes.

A. And this is in answer to a question as to what I called the quieting?

Q. Yes.

A. Well, you want to know the others?

Q. Yes.

A. I was not present and I—

Q. How do you know there were three or four?

A. Well, I would say hearsay.

Q. Where did you get your information?

A. Oh, just got it from—

Q. From whom, that is what I want to know.

A. Well, I don't know.

Mr. Leisure: Now, I move to strike out the witness' testimony which Counsel in now taking up with him.

Trial Examiner Norwood: You have already moved that and it has been allowed.

Mr. Leisure: Thank you.

Trial Examiner Norwood: If he can give us any further information on about what happened there,

11208 why, he may do so.

Mr. Wooden: I asked him, and I want to repeat my question, as to the source of his information of the three or four others, other than Mr. Stone who came to Detroit.

Mr. Leisure: Well, now, the witness has answered the question. I see no need for continuing to press him with the same question. He is asking where he got the information, and the witness has told him frankly that he doesn't know; it is hearsay; it is gossip.

Mr. Wooden: I want to find out the source and then we will find out whether it is hearsay.

Mr. Leisure: No further questions will develop it any.

Trial Examiner Norwood: He may find out anything further that he can on that.

Read the question.

(Question read.)

A. I—the only thing I know is that is why I used the word that the thing was quieted. How and by whom, I don't know.

By Mr. Wooden:

Q. Well, at the same time, Mr. Crapo, I want to ask you the source of your information that three or four other than Mr. Stone came to Detroit on that matter.

Mr. Leisure: I object to that question. The 11209 question has been answered.

Mr. Wooden: No, he hasn't answered it.

Trial Examiner Norwood: He can answer it again.

Mr. Wooden: He hasn't answered it.

Mr. Leisure: He hasn't answered it?

Mr. Wooden: No.

Mr. Leisure: The witness said it was hearsay, when you asked him where he got it from. He said it was gossip; he didn't know where he got it from.

Mr. Wooden: That is no answer. He hasn't said he didn't—

Trial Examiner Norwood: Answer the question further.

A. Well, I don't know where I got it from, and I have no knowledge whether there was three or four or more or less or who.

Q. Did you get your information from Mr. Rooney?

Mr. Leisure: I object to that question. The witness has said he didn't know.

Trial Examiner Norwood: Objection overruled.

Mr. Leisure: He has answered several times.

11210 Trial Examiner Norwood: He may be able to refresh his memory by the question.

A. I don't think so. I don't think Mr. Rooney was there, either, although I don't know that.

By Mr. Wooden:

Q. Did you get it from someone who was there?

A. Well, now, I don't know who was there.

Q. Did you get your information from Mr. Johnson, F. R. Johnson?

A. No, not from Mr. Johnson.

Q. Did you get it from any cement manufacturer representative?

A. I—the impression that I got simply came from some source, gossip of people that I thought knew something about it.

Q. You mean cement manufacturers?

A. I don't know whether they were cement manufacturers or customers, or—

Q. What would customers know about such a matter?

A. Well, I don't know why they should know anything. I don't think I know anything about it, either.

Q. You had no doubt as to the accuracy of your information?

Mr. Leisure: I object to that, whether he had a doubt as to the accuracy. That, of course, is not material. We object to the question.

11211 Trial Examiner Norwood: The objection is overruled. Answer the question.

A. I think that you always have doubt of something that you don't personally know.

By Mr. Wooden:

Q. Is that doubt something that has come into your mind since I asked you the question?

A. No.

Q. Or is it a doubt that you had at that time?

A. My impression was vivid, and I think I am right, that three or four people were over there. I don't know who or why, but all I know is there were three or four other people over there.

Q. From where?

A. Well, I don't know where they came from. I said

one I thought came from Chicago, and after the clouds rolled by, the situation was quieted.

Q. Can you tell me, Mr. Crapo, what Exhibit 417-M is?

Mr. Smith: Is that the one that I excepted from my stipulation? Yes, that is the one I excepted from my stipulation.

A. I don't—I haven't seen this. This says: "This is a copy of the original draft of a trucking plan which was hoped could be adopted for Michigan."

Q. Yes.

11212 A. Now, that for a good many years has been—

Mr. Smith: Mr. Crapo, the question is—pardon me—the question is whether you know what it is.

The Witness: No, I don't.

By Mr. Wooden:

Q. Had you seen it before I showed it to you just now?

A. No, I have not.

Q. Do you have any knowledge of the receipt by your company of anonymous communications from time to time without being shown on the face of them who was the author or who was the sender?

A. Nobody ever wrote me an anonymous letter.

Q. No, I don't mean you personally, but your company about freight matters?

A. I don't know of any such. When you put in about freight matters, that is different. We have had anonymous letters.

Q. Have you had anonymous letters about freight matters which you had reason to believe came from competitors of the Huron Company?

A. No.

Q. No?

A. No.

Q. Was Mr. Rooney vice president and sales manager of your company?

11213 A. I don't think so.

Q. He has never been?

A. Well, how does he sign that letter?

Q. Well, I—

A. Well, it is vice president; he signed it.

Q. I am asking you whether he has ever been vice president and sales manager of your company.

A. I believe my recollection is that the minutes of the company does not show Rooney's appointment as a vice president.

Q. Did you ever know him to sign letters as vice president?

A. The first time I saw it.

Q. Did he ever draft letters for your signature as vice president?

A. No.

11214 Q. Referring to Commission's Exhibit 417-N, it appears therefrom that A. J. R. prepared the letter and it was for the signature of vice president and manager; can you explain that?

A. I can't explain that, as secretary of the company.

Mr. Smith: Mr. Wooden, will you correct that—for the signature of vice president and sales manager—not manager.

Mr. Wooden: That is right, sales manager.

By Mr. Wooden:

Q. Mr. Rooney has been sales manager; is that right?

A. He was sales manager.

Q. And you have been vice president?

A. Well, I—yes, vice president and—

Q. Has anybody, so far as you know, been both vice president and sales manager?

A. Living?

Q. Well, for the period of the last five years.

A. Well, Mr. Boardman was vice president and sales manager.

11215 Q. When?

A. Well, now, up until his death.

Q. And when was that?

A. Mr. Boardman died and was followed by Mr. Jones, and he was followed by Mr. Rooney. Now, Mr. Boardman was regularly given the title of vice president, limited.

I think that the explanation of that is that the title rather carried on, but not authorized by the company. That's the only way that I can explain it. I would have no objection to it, if he wanted to sign himself as vice president, why—

Q. (Showing paper to witness) Referring to Commission's Exhibit 417-AA, which is Mr. Johnson's letter to

Mr. Rooney, June 28, 1935, in which Mr. Johnson says that concerning Grand Rapids:

"At the time no trade letter was universally in existence in Michigan."

Do you know what is meant by a "trade letter"?

A. Well, a—(witness refers to papers).

Q. He went on to say: "And as long as Wayne County or the District of Detroit was open on all municipal quotations, that we felt that this applied to Michigan as well."

Do you know what being "open" on such quotations, municipal quotations means?

11216 Mr. Leisure: I want to object to the last question. Mr. Wooden is asking the witness to interpret the man's letter. As I understand it, Mr. Johnson is the author of the letter, Exhibit 417-AA, to Mr. Rooney. Mr. Wooden is now asking this witness what Mr. Johnson meant when he used certain terms. I submit that—

Trial Examiner Norwood: No, he is asking him what he understood the term to mean. Did he receive the letter?

Mr. Wooden: Addressed to Mr. Rooney as sales manager.

Mr. Leisure: His conclusions on that would not be admissible.

Mr. Wooden: I am asking on the basis of his knowledge and familiarity with the cement business as to whether that kind—as to what that kind of an expression in the cement business meant.

Trial Examiner Norwood: You can ask him what he understands by the expression.

Mr. Wooden: Yes.

A. I don't understand it.

Trial Examiner Norwood: Well, that settles it.

By Mr. Wooden:

Q. Do you recall accepting a portion of that
11217 order which is referred to in that paragraph?

A. (Witness refers to exhibit).

Q. It says Huron and Aetna accepted their portion of the distribution for 1500 barrels sold at the regular price.

Mr. Leisure: I make the same objection. He is asking him to interpret the statement that is made by Mr. Johnson, and when we consider the fact that the witness has said that he saw the letter for the first time here, was not

even familiar with it at the time it was received, his conclusions would not be admissible.

Mr. Wooden: My last question was whether his company participated in that particular distribution of that order.

A. They may have.

Trial Examiner Norwood: I will overrule it.

The Witness: They—

Trial Examiner Norwood: Wait a minute. I will overrule the objection; let him answer the question.

A. I—without looking at our records—I don't know. That is evidently a division,—of an afterthought. I mean the proceeding at Grand Rapids was made a contract, and then it was sublet, subproportioned to other people; I know nothing about that.

Q. And your company was one of the—

11218 Mr. Smith: He says he knows nothing about it.

The Witness: I know nothing about it. It may have been. I don't know.

By Mr. Wooden:

Q. You do not recollect anything about it?

A. No.

Mr. Zimmerman: The record will show.

Mr. Leisure: The witness made a statement which is voluntary about division, part of it, as to having been sublet, and then he ended up that he did not know about it so I move to strike that part of his answer as being hearsay.

Mr. Wooden: The exhibit is a letter addressed to an official, sales manager, of the witness' company.

Trial Examiner Norwood: It was the witness' information of that situation.

Mr. Leisure: And he said that he knew nothing about it.

Trial Examiner Norwood: He said it might have meant—

Mr. Leisure: He said it might have been. I move to strike that.

Trial Examiner Norwood: Well, we will let it stay there. It is explanatory.

The motion is denied. That is part of this sub-

11219 ject.

By Mr. Wooden:

Q. Mr. Crapo, showing you Commission's Exhibit 1370, which is a map showing the territory controlled by various bases, as of July 7, 1933, and directing your attention to the area controlled by the Toledo base, which is colored on the map—(showing paper to witness)

A. Blue.

Q. —that territory ends, does it not, right at the Ohio-Indiana line on the west, and the Ohio-Michigan line on the north?

11220 A. That map—that is just a working map—evidently the Wyandotte base controlled up to that point (witness indicates on map).

Q. Do you mean up to the Michigan-Ohio line?

A. Up to that line (witness indicates on map).

Mr. Leisure: Wait a moment.

The Witness (Resuming answer): Now, what controlled over here, I don't know (witness indicates on map).

Mr. Leisure: Just one moment. The map says Ohio base prices, so apparently it would end with Ohio.

Mr. Smith: Yes.

Mr. Leisure: I want to object to the question, saying controlled in any other territory—

Mr. Wooden: Well—

Mr. Leisure: —because the face of the map shows it was Ohio base prices.

By Mr. Wooden:

Q. I will ask you, Mr. Crapo, if it is not a fact that the Toledo base did not control any territory in Michigan?

A. That's the question—on the figures—

Q. Well, don't you—

A. I can't remember that map there.

Trial Examiner Norwood: Did you not testify that it controlled up to where it met Wyandotte?

Mr. Leisure: I think the question is ambiguous.

11221 Mr. Wooden: I think up to the State line.

Mr. Leisure: I don't know what Counsel means by "control"; perhaps the witness does. I think it is ambiguous.

Trial Examiner Norwood: I think it is clear.

Mr. Wooden: The map uses that word, and the maps were obtained from Mr. Crapo's company.

Mr. Smith: Yes, but the map only purports to show the State of Ohio; nothing else.

Mr. Wooden: Well, I am seeking to ask this witness—
The Witness: Yes, but the map—
Trial Examiner Norwood: Yes?
The Witness: —is one I use a good deal as a working —see how the stubs—and outside of those captions, whether they are up right or not, I don't know, but that could easily be checked back—I mean, you can't have a map so big that it covers all our territory; that is just the Ohio territory.

By Mr. Wooden:

Q. Well, don't you know from your use of the map, and your connection, your conduct of the business, whether or not the Toledo base controlled any territory in the State of Michigan?

A. That's on July 7, 1933?

Q. Yes.

11222 A. And my recollection is not clear, but the— but bases were clear—now whether this map covers all the—I mean whether you can trust this map any more than you can trust the freight book—

Q. I am not asking you to trust the map; I am trying to base it upon your knowledge of the business.

A. I—I don't want—the records are there, but I can't remember it in my head.

Q. Can you state, of your own knowledge of the business,—from your knowledge of the business,—whether or not the Toledo base has ever gone beyond or controlled territory beyond the Ohio-Indiana line?

A. I can't even say that; I don't know; there may— here is Buffington over here (witness indicates on map).

Q. Yes.

A. And Gary (witness is referring to map), and this may have gone over into Indiana, but this map don't purport to be Indiana. It is the record that gets it. It is—it purports to be Ohio.

Q. Did your company put in the Toledo base?

A. I don't even know that. I think it is probable.

Q. Will you make such check on that that will permit you to answer my questions as to whether the Toledo base ever controlled any territory north of the Ohio-Michigan line and west of the Ohio-Indiana line?

11223 A. I will be glad to get that information in some way to you, but I have got to go to the office to find out.

Q. All right.
Mr. MacIntyre: He can send it in.
The Witness: All right, that will be all right.

By Mr. Wooden:

Q. Will you send it in?
A. And now you are referring to '33 or—
Q. Make it at any time.
A. Oh, that is a general question?
Q. Yes.
A. I see. At any time.
Q. Yes.
A. Whether the Toledo base ever ran up into Michigan.
Q. Or Indiana.
A. Or Indiana.
Q. And if so, when.
A. I see.
Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. You spoke yesterday of your having that flat price, delivered price, in effect throughout the lower peninsula in 1937. After you withdrew that flat price, then how were the prices delivered in Michigan calculated?

A. Well, we put basing points on Muskegon, Sag-
11224 inaw, Alpena, and Wyandotte.

Q. The Huron Company?
A. That is the Huron Company.
Q. Did that at all those points?
A. Did that at all those points.
Q. Did it have either mills or silos at each of those points?
A. It had packing plants.
Q. You mean by packing plants, silos or what?
A. Well, the cement trade first called them fish houses, which was derrogatory, and then they called them silos, and, consistently, from the beginning, we have always called them packing plants. They are part of our Alpena mill.

Q. Have there been times when the Buffington base controlled the delivered prices in a part of southwestern Michigan?

A. Well, there are—they are almost always up in the southwestern part of Michigan.

Q. Referring in that connection to Exhibit 1372—
A. What date is that?
Q. That is December 11, 1933. That shows an
11225 area there in southwestern Michigan controlled by Buffington, does it not?
A. What is that color?
Q. It is right there.
A. That is green, isn't it?
Q. Yes.
A. Yes, that is controlled—
Mr. Smith: Is Mr. Crapo and Counsel in agreement as to the interpretation of the word "control"?
Mr. Wooden: Well, that is what appears—
Trial Examiner Norwood: I think so. It means the prevailing price, doesn't it?
The Witness: The prevailing price.
Mr. Leisure: What is that exhibit number, Mr. Wooden?
Mr. Wooden: 1372.
Trial Examiner Norwood: 1372.

By Mr. Wooden:

Q. Now, as the base prices changed from time to time in that general section, has that area controlled by the Buffington base shrunk or increased from time to time?
A. Well, it shifts.
Q. It shifts. That is what I mean.
A. I think that when we had the State of Michigan plan, we wiped it all out.
Q. What do you mean "State of Michigan plan"? What plan?
11226 A. Well, what I call that, where we made one price delivered in the State of Michigan.
Q. That wiped out the Buffington base in Michigan?
A. We pushed Buffington back, brought our line down.
Q. Did the Universal-Atlas people make any complaint or criticism?
A. No.
Q. Because of their being shoved out of it?
A. They made no—
Q. Of the portion of Minnesota where they had formerly—
Trial Examiner Norwood: Wait a moment.
Q. —where the Buffington base had formerly controlled?

A. In Michigan?
Q. Yes.
A. Nothing that I heard, no.
Trial Examiner Norwood: Wait until he completes the question before answering.
The Witness: Yes. I didn't get that.

By Mr. Wooden:

Q. You spoke yesterday of certain, I believe it was, Wabash complaining of the effect of that flat price in Michigan.
A. Well, down in that Southwest territory there, when we put that in, why, Wabash got a lower price than they had previously.
11227 Q. When you put it in. Didn't Universal get a lower price than they previously had?
A. Sure. But I don't think they had the business, and they didn't care. That is the only explanation I have got.
Q. You mean that the Buffington base controlled at one time an area in Michigan in which they had little or no business?
A. That map only shows where on the prevailing price, with everything around, the mill that is shown in there makes the greatest net.
Mr. Zimmerman: I didn't hear that last. Will you read it?

The Witness: It made the greatest net.
11228 Now, back in the early days, why, Buffington controlled the whole of the State of Michigan.
Mr. Smith: Under that definition of control.
The Witness: Under that definition of control.
Mr. Zimmerman: May I ask, Mr. Wooden, what you mean by control in that instance? Just a situation where Buffington delivered price in that area of Michigan was lower than any price quoted by their competitors at that time?
Mr. Wooden: Yes, substantially that.
Mr. Zimmerman: I see.
The Witness: That is right.
Mr. Wooden: That the sum of the Buffington base plus freight to—
Mr. Zimmerman: To where the points of delivery—
Mr. Wooden: —at least was as low or lower than any other base.
Mr. Zimmerman: Yes.

By Mr. Wooden:

Q. Mr. Crapo, during the time that your flat price was in effect in lower Michigan, you mean to say that the Buffington mill was not shipping into Michigan?

Oh, no, no, only they got—they shipped into a territory that brought them less net.

Q. While during the time—

11229 A. Further up they got more net than we did.

Q. During the time that the Buffington base controlled—

A. Yes.

Q. —a part of Michigan?

A. Yes.

Q. They got the highest net there?

A. They got the higher net, and when we went in, we had to meet that competition, and we got a lesser net.

Q. Yes.

Mr. Smith: But you got the business?

The Witness: What?

Mr. Smith: But you got some of the business?

The Witness: We always get some. You can't avoid it.

Trial Examiner Norwood: That was off the record. The question and answer. Delete it.

By Mr. Wooden:

Q. During the time that you had that flat price in effect, did the Buffington base plus freight into that southwestern area of Michigan make a lower or a higher delivered price than the flat price you had in effect?

A. I would have to go to my records to see that, but I think—

Q. Will you ascertain that?

A. I will ascertain it, if you will give me a list. I

11230 will ascertain that.

Q. Mr. Crapo, yesterday we went over the matter of the Milwaukee price structure. To what extent has Huron Portland Cement Company sold cement in Chicago?

A. Practically never.

Mr. Leisure: How much are you going to cover this whole situation again? That exact question and answer was made yesterday, that exact question and answer.

Mr. Wooden: I didn't touch on Chicago yesterday as far as Huron was concerned.

Mr. Leisure: Yes, I think the record will show that.

Trial Examiner Norwood: I don't recall that.

Mr. Wooden: I was talking about Marquette in Chicago, but not Huron.

By Mr. Wooden:

Q. Why is it that you have not gone into the Chicago district to sell cement?

A. We would rather sell our cement nearer home.

Q. You go farther than Chicago, don't you?

A. Yes, but we don't run into as many competitors. It isn't a hole that the football goes out.

Q. Isn't Chicago one of the largest cement consuming markets?

11231 A. Yes, but exceedingly well taken care of by the local mills.

Q. What are the concerns that serve the Chicago market?

A. Well, there is Buffington—

Q. Universal Atlas?

A. That is Universal Atlas, yes. Then there is the Lehigh, and LaSalle, and the old German-American. I go back. That is Alpha, isn't it?

Q. I don't know.

A. And Marquette. And then you have got Dixon, Medusa to the west of Chicago; then the sharpshooters from outside coming in.

Q. The ones you have named would you say have—

A. Those are the substantial ones.

Q. —have the great bulk of the Chicago business?

A. Yes, they have the great bulk of the Chicago business.

Q. Now, as to Marquette serving Chicago, didn't you write Mr. Affleck of Universal asking him why Marquette passed up Chicago and thought of going to Milwaukee?

A. Oh, no. Well, that was the Marquette's own statement, that they were going to put boats—

Q. Yes.

A. —and build a plant and take it to Milwaukee.

Q. But you also made a reference to their passing through Chicago, too, without—well,—

11232 A. Well, they got to pass through Chicago.

Q. Yes.

A. With those boats. Now, why not stop them when they get the same amount for cement?

Q. Do you still say that Marquette is a prominent factor in the sale of cement in Chicago?

A. Yes.

Q. Is that so?

A. They have railed it for years.

Q. Well, will you explain what you meant by your statement in the letter to Mr. Affleck, Exhibit 418-E and F, when you asked him: "How has Universal kept Wecker's envious eyes off Chicago and environs?"

A. What I meant by it?

Q. Yes.

A. Just what I said.

Q. Well, did you understand that Wecker had kept his—

A. No.

Q. —eyes off of Chicago and environs?

A. Wecker goes into this magazine article.

Q. Yes.

A. Saying that he is going to build these boats, to build a packing plant, and go to Milwaukee?

Q. Yes.

A. And he made no reference to going to Indiana
11233 Harbor or South Chicago or Waukegan. That is why I said I didn't know why—

Q. Wouldn't your net be as large in Chicago as it would be to Duluth?

A. Well, it might, but if you have got a limited amount of cement to sell, which is always the case, because you can't get it, why sell it all over the world?

Q. But you go farther than Chicago?

A. Well, we get better—we can't—we have to make more acquaintances and more contacts. We don't get ourselves in harmony with the customer, and we have never made any attempt to get into Chicago and get into that maelstrom over there of contractors and other things. We just pass through it. That may be bad judgment, but that is what has happened.

Q. Have you had any fear at any time that if you went into the Chicago territory there would be reprisals against your company?

11234 A. No, and I think we are going to get a piece of Chicago.

Q. What do you mean?

A. Why, I think there is a contract hatching now, that I won't go into any further.

Q. I wouldn't ask you to.
A. It—the hen might be driven off the nest on it.

Cross-Examination by Mr. Smith.

Q. Mr. Crapo, can you give us an idea of the extent of the limestone available at your Alpena plant for the production of cement?
A. Well, I think as free magnesia stone, that it is the largest known deposit in the world. You center it about the Straits of Mackinac, and you go—well, we are right on the southern end, and you go around, and it is in Canada, and all the way around, and it runs very true.
Q. When Huron was established had it already been developed in the quarry by the alkali company?
A. Yes, sir.
Q. That quarry is one of the largest in the world, isn't it?
A. No, it is the best but not the largest.
Q. I see. Well, the other raw material that you
11235 need, silica, the shale, you find that adjacent to Alpena?
A. Within 10 miles.
Q. Yes. Would you or would you not say that the available raw material at your plant in Alpena is for all practical purposes practically unlimited?
A. I would.
Q. Do you know of any limestone rock on this continent any better adapted to the manufacture of cement than that which is found there?
A. I do not.
Q. Is there any other plant in Michigan—cement plant in Michigan—that gets its supply of raw material, cement rock, at its door as does the Huron? I mean out of the ground, that is?
A. There has been, I believe, attempts, but none in existence, not in my opinion.
Q. Some of your competitors use marl?
A. Some use marl.
Q. And others use—and Ford uses its refuse.
A. Slag.
Q. And the others use stone brought from a distance?
A. Brought from the same locality that Huron is in, only farther off.

Q. In other words—

A. That Aetna, Bay City, and Peerless bring the
11236 stone down to the mill instead of taking the mill up to the stone.

Q. Take, for instance, Peerless—

A. In Detroit.

Q. —in Detroit, brings its stone from the—

A. Rogers City.

Q. Rogers City near Al—

A. North.

Q. —it is north of Alpena?

A. Yes.

Q. And I think you already testified that so far as the stone is concerned, you use the fines?

A. Yes.

Q. That is, the pulverized stone that is not usable, or used, in the manufacture of the alkali product by the Michigan Alkali Company?

A. That's correct.

Q. This quarry is the quarry of the Michigan Alkali?

A. Michigan Alkali.

Q. So you have already testified as to the relation between the alkali company and the Huron. You acquire, then, the limestone from the Michigan Alkali?

A. Michigan Alkali.

Q. And manufacture into your—into cement at Alpena?

A. Right.

Q. Did you ever have a manufacturing plant, or
11237 see a manufacturing plant, in Detroit?

A. Well, we brought down clinkers to Detroit.

Q. And for a time ground clinker in Detroit?

A. Ground the clinker in Detroit.

Q. What is the available—what available market for cement is there within, we will say, a hundred miles of Alpena?

A. Well, it is a very sparsely settled country, and the volume is very small.

Q. And until you get over to Duluth there is practically no market through the northern peninsula, that is true, is it not?

A. That's true.

Q. And until you come around down to Green Bay, or Milwaukee, there is no market on the farther shore of Lake Michigan?

A. Not of any size.

Q. And, of course, on the East, you are cut off from Canada?

A. Yes.

Q. On the South you reach some market at Saginaw and Bay City?

A. Saginaw and Bay City.

Q. That is about 150 or 160 miles from—

A. Yes.

Q. Then 30 miles below you reach the Flint territory, and there is some market there?

11238 A. Yes.

Q. And another 50 miles you have to go before you reach the Detroit market?

A. Yes.

Q. Have you ever made an estimate or guess—I do not want to call it a guess—an estimate of how much cement Alpena could manufacture up there if it was limited to the available distribution out of Alpena?

Trial Examiner Norwood: If it were or were not?

By Mr. Smith:

Q. How much it could distribute in the territory adjacent to it if it was limited to rail distribution.

Q. Out of Alpena.

A. Well, the only rail comes down to Bay City.

Q. Yes.

A. And there you meet the Aetna, so I don't believe it would be 200,000 barrels, at best, if you had it all.

Q. Yes. And practically, certainly, not enough to justify the construction of a plant?

A. That's right, certainly not.

Q. What was the first steamer that you used—first boat you used—in the distribution of cement, and about when did you start distribution by boat, if you can remember?

A. Well, we first used package freighter at Port
11239 Huron and Duluth. Jenks—that was run by a man named Jenks, and then the movement got fairly heavy, and we used another in addition, McClouth's boats, those were lumber carriers, McClouth's water boats, package freighter.

Q. Now in those boats you carried the cement after it was sacked?

A. After it was sacked.

Q. Was the Steamer Mitchell your first boat that carried the bulk conveyor?

A. Well, yes, evidently yes, McClouth's—I mean the Mitchell was the first boat.

By Mr. Smith:

Q. Well, that was the bulk conveyor; is that true?

A. Converted by us into a bulk conveyor.

Q. Yes. You followed that by two other boats; what were they?

A. The Boardman and the Crapo.

Q. Can you give us an idea of the investment in those three boats, the cost of them?

A. Well, it was close to $2,000,000.

Q. Well, now, let us go back into the commercial history a little bit.

11240 Something was said yesterday about the freight rate from the Lehigh—from the Valley—from the Lehigh Valley into the lakes. Do you recall, approximately, when it was that you instituted that flight on the lake, and rail rates from the Valley into the lake territory?

A. My recollection is that the suit was instituted against rail—I don't think lake into Michigan deliveries—lake—rail got up to Minnesota, so they must have been—that must have been done somewhere in 1910, I guess.

Q. Yes, about 1910 or 1911?

A. Yes.

Q. Well, that did involve, did it not, Mr. Crapo, not only the rails into Michigan but the lake and rail—

A. Yes.

Q. —to the head of the lakes?

A. Yes.

Q. And at that time you had begun to meet—your Duluth business had begun to enlarge so that you were affected by the low rates that brought the cement from the valley up to the head of the lakes?

A. Yes—but I don't think we ever objected to it.

Q. Well, the proceeding before the Interstate Commerce Commission involved not only Michigan rates but the lake and rail rates?

A. (Witness makes no response.)

11241 Q. And then, as you testified, that resulted in the reconstruction of the rates which raised the rates from the valley?

A. Yes.

Q. So that it was more costly for the valley mills to get into the Michigan territory?

A. Right.

Trial Examiner Norwood: Is that right?

The Witness: Yes, that's right.

11242 Q. Mr. Crapo, will you look at this memorandum prepared by Mr. Townsend—by the way, who is Mr. Townsend?

A. Mr. Townsend is—well, he has direct charge of our boat and lake plant, but he is also in the office, and he does a good deal of our statistical work, and a good deal of our decisions. He is high up in the Huron Cement.

Q. Will you look at this memorandum prepared by him and tell me what was the first plant property acquired after the establishment of the mill in Alpena and acquired at some other point on the lake?

A. Well, Detroit in 1911.

Q. That was the Riopelle Street plant?

A. That is what we call the Riopelle Street plant.

Q. Was it that plant that for a time burned the clinker?

A. No.

Q. Or ground the clinker?

A. Ground the clinker, yes.

Q. And over how many years was the clinker ground?

A. Well, it was, let's see, oh, I should say around six or seven years.

11243 Q. And after that the grinding mills were taken out and the bulk cement was moved down, and that was used as a distributing plant?

A. Just as soon as we got a bulk boat, we stopped it.

Q. What does the memorandum indicate as to the investment in that Detroit property?

A. About $621,000.

Q. Well, that is a little more than a silo, then,

11244 Mr. Crapo?

A. Yes, it has got a lot of machinery besides the pure storage.

Q. Yes. What was the next plant that you established outside of Alpena and Detroit?

A. Well, Cleveland in 1916.

Q. And the next one was when?

A. Duluth in 1917 and '18.

Q. And then the next one?

A. Milwaukee in 1923.
Q. And the next one?
A. Buffalo, 1928.
Q. And the next?
A. Toledo in 1929.
Q. And Oswego when?
A. 1932 and '33.
Q. What is the next one?
A. Saginaw in 19—well, that—oh, 19—no.
Q. '32?
A. Well, I know, but three years, 1932 to '35. That doesn't sound exactly reasonable to me.
Q. And the last one on that sheet?
A. Is Muskegon, in 1937.
Q. Now, after the Cleveland plant was built in 1916, was its capacity increased, and when?
11245 A. We bought some adjacent land and built some additional silos.
Q. And about when?
A. I have to go to my records.
Q. Well, this memorandum gives it. Would that help you?
A. Oh, yes, 1927.
Q. In Milwaukee, did you afterward increase that plant?
A. In '28, built in '23; in '28 we increased it.
Q. Now, give us the total investment in those outside plants.
A. $2,769,000.
Q. Have you now a plant at Green Bay?
A. No; just feeling the ground out.
Q. Now, let's see. Did you feel out Muskegon before you built there?
A. We tried that the year before we—

11246 By Mr. Smith:

Q. Do you remember whether or not you tried out Saginaw before you built there?
A. I think we did; I think that may account for it.
Q. May account for that period?
A. May account for the period in there where we ran both the—
Q. Take, for instance, Muskegon, how do you mean you felt it out? What was the mechanical process by which you felt it out?

A. Well, we put the Mitchell in there, small boat, and we used it like a warehouse.

Q. Yes.

A. Rather expensive operation, but to see whether it was—what good will we could get up, what trade.

Q. I see. Is that what you are doing with Green Bay?

A. That is—

Q. At the present time?

A. That's what we are doing with Green Bay.

Q. This list, then, with the operations of Green Bay out of the Steamer Mitchell—

A. Yes.

Q. —is a tabulation, to your knowledge?

A. Yes, sir.

Q. That was accurate as to the number of plants, 11247 their location and their cost?

A. Yes, and their costs.

Mr. Smith: Will you mark this for identification?

Trial Examiner Norwood: Respondents' Exhibit 47, for identification.

(The document headed "III.—Townsend," was marked for identification as Respondents' Exhibit 47.)

Mr. Smith: It is offered as part of the cross examination.

Mr. Wooden: No objection.

Trial Examiner Norwood: Are you offering it in evidence?

Mr. Smith: Yes, I offer it in evidence.

Trial Examiner Norwood: Received as marked, Respondents' Exhibit 47.

(RESP. EX. 47 was offered and received in evidence.)

By Mr. Smith:

Q. Now, where are these various plants located—where are the plants, these several plants, located, with respect to water facilities in these several cities?

A. Well, they are all on, we might say, deep 11248 water, I mean—well, the big boat improvements, I mean they are all—they are not on any creeks, or anything of that kind.

Q. They are all where the big boats can tie up alongside?

A. Yes, alongside, good sized boats.

Q. Now, then, that included not only the warehouse or storage capacity—

A. Yes.

Q. —what else is there in connection with that?

A. Well, they have the sacking, machines, office, and all the work necessary to prepare the cement in the container or bulk out of the storage bins.

Q. Is there any machinery connected, installed, that is, used in connection with the unloading of the boats?

A. The boats deliver to the edge of the dock, and then from the edge of the dock they lift it and convey it into these bins.

Q. That is done by machinery which is installed on the dock?

A. Installed on the dock.

Q. Of the plant. Is any additional machinery, capacity, there used for sorting and cleaning and repairing the bags?

A. In some of the places we do, we receive bags back and recondition them.

Q. Yes.

Now, I would like to have you state there, re-
11249 freshing your recollection from this memorandum, the investment in the three steamers of the company (handing paper to witness)?

A. Well, the Mitchell is $208,000; the Boardman, $684,000; and the Crapo, $896,000; a total of $1,788,000.

Q. When was the Boardman built and put in service?

A. In 1923.

Q. And when was the Crapo built and put in service?

A. In 1927.

Q. I want you to describe generally these boats, and the operation of them in connection with the service in which they are used in transporting bulk cement.

11256 Q. Well, Mr. Crapo, we will assume, then, that we have got the cement into the lake ports.

You were asked upon direct examination questions as to the practice of using trucks I think in all of the points on the lakes that you move your cement to. Is it not a fact that as to each of these points you have offered truck delivery facility to your customers?

A. It is, yes.

Q. And has the use of the trucks in these various ports increased or decreased from the time that it was first installed?

A. It has increased.

Q. This memorandum that I hold here begins with the year 1925, and which is attached to the previous memorandum of Mr. Townsend, and ends with 1936. I
11257 want you to use Detroit as a more or less typical example, or, at least, tell us beginning with '25 the portions of the total shipments into Detroit that were handled from your Detroit plant by truck to your customers, and would the balance be that which was handled by rail to your customers?

A. Yes.

Q. Well, we will shorten it by only using the truck figures, and I want you—that would mean reading the truck percentages.

Q. Will you begin reading as follows: 1925—

A. (Reading) 1925, 62.6 percent went by truck. 1926, 69 percent. 1927, 64.7 percent. 19—oh, here it is—1928,
11258 87.6 percent. 1929, 80.5 percent. 1930, 75.8 percent. 1931, 85.4 percent. 1932, 82.6 percent. 1935, 84.4 percent. And—

Q. How about 1933? That was the last?

A. '33. And 1934, 85.2 percent. And 1935, 88.6 percent. 1936, 96.9 percent.

Q. Yes.

Mr. Wooden: By trucks?

The Witness: Trucks.

By Mr. Smith:

Q. Now, that is a greater percentage of truck delivery in Detroit than in the other ports, is it not?

A. Than the other ports, yes.

Trial Examiner Norwood: Does that memorandum show the destination of the truck shipments, the destinations?

Mr. Smith: No, it does not. That would be within what Mr. Crapo has described as the trucking area.

Trial Examiner Norwood: I see.

By Mr. Smith:

Q. Now, let us do the same thing for Cleveland.

A. (Witness refers to list) 1925, 45 percent. 1926, 46.4 percent. 1927, 66 percent. 1928, 61.9 percent. 1929, 47.4 percent. 1930, 94.8 percent. 1931, 95 percent. 1932, 95.3 percent. 1933, 86.9 percent. 1934, 65.3 percent. 1935, 52.9 percent. And 1936, 43.9 percent.

Q. Well, on what was the theory of which you
11259 offered to your trade—you did offer, did you not, an optional delivery, truck or rail?

A. Yes.

Q. What was the theory upon which you made that offer?

A. Well, our theory was that the user could determine which was best for him, so that in this, the truck area, it had to be a reasonable trucking area for trucks to work on. We didn't care which one he chose.

Q. Now, the truck as has been pointed out would carry it direct to the job?

A. To the job.

Q. And obviate, as far as the job trade was concerned, the necessity of storage in a dealer warehouse?

A. In a dealer warehouse, and the re-loading, and the putting on of the trucks, and taking it out.

Q. Is it not true that in that respect it reduced or affected the service which the dealer assumed to perform?

A. Well, any cement that we sold to a contractor direct, were—well, the dealer did not enter into it.

Q. Yes.

A. Of course, there is a lot we sold dealers in here, too.

Q. But, in so far as the cement that went to the contractors, it eliminated, then, the dealer?

A. Yes, it eliminated the dealer.

Q. Was it your experience that you found some
11260 resistance amongst dealers to trucking, and do you trace it to that reason?

A. There has been a great deal of resistance from the dealers; it is slowly getting less, we will say.

Q. In this truck distribution, is it the general custom for the Huron to assume the responsibility for the distribution, and employ or furnish the trucks?

A. When the Huron makes a delivered price, why, that's where our service of being on the job, or warehouse, or wherever they want it, that's where it ends, we do all the arrangements about that.

Q. That means that where you make the delivered price you perform the—

A. The transportation.

Q. —the transportation service?

A. Transportation service; yes, sir.

Q. And on direct examination you said that was limited within a certain radius of your various plants?

A. Yes.

Q. Let us go back now to Oswego, where you entered in 1932 and 1933. Did you offer to your trade there truck delivery?

A. Yes, we offered it truck delivery at Oswego.

Q. And in what territory was that offered?

A. I would have to go to the records to—I don't think it was very definite; I think we were feeling out
11261 how far trucks could go. Of course, there is certain maximum limits that it did go; of course, at that time I thought it ought to go 40 miles.

Q. Well, did you find your competitors in Oswego making truck deliveries out of any plant in Oswego at that time?

A. Well, there was no plant in Oswego.

Q. There was no plant in Oswego?

A. No.

Q. So that you established the practice of truck delivery in Oswego?

A. In Oswego.

Q. You still continue that practice?

A. Yes.

Q. Did you testify as to the territory in which you made truck deliveries in Oswego; do you recall that?—

A. I don't think so.

Q. —at the present time?

A. I—I—that's a matter of circular that we could get—I mean, as to how far it goes. It is approximately 40 miles.

Q. In other words, the radius—well, you do not describe your truck service by saying the job will be within a radius of 20, 30, or 40 miles?

A. No.

Q. You describe it by geographical bounds?

A. Well, that's just for convenience. Of course
11262 down there I think I testified that we did, Cuyahoga County, that's a good clear thing to everybody, but when you get up to Oswego, why, the counties don't lie right, I think this thing has got three counties in it, but you have to make the mark between the cities that are in it.

Q. But out of Oswego you did establish the trucking limits and described them?

A. Well, we have established them, not when we first went in, but we established them.

Q. Yes, yes. Now, has that been established by any agreement of any kind with any other competitor?

A. Well, when this service began to go—to get started, why, there was naturally a good many questions that the nearby mills brought up, and that led to considerable conversations, and the result of those conversations was, I think, we made it 40 miles. I can get that. I know we didn't like it, because we just missed Syracuse, that we would have liked to have, but in order to quiet the situation we—Syracuse was out.

11263 Q. Yes. You said on direct examination—you used the word "fear" in connection with describing that situation. I want to see just what your idea was in using that word.

A. Well, there was a good deal of rather intense feeling as to that—and we—Huron felt—that if we pushed it too far that something would be upset somewhere or other, we didn't know. We tried—to use the other expression—to quiet that situation. Neither side of this was satisfied with the result.

Q. Well, I take it, then, Mr. Crapo, that you are meaning to say that in some respects you modified your conclusion as to the extent of trucking by the fear that in competition somewhere else some action would be taken to your injury?

A. To our detriment, yes, sir.

Q. Yes. Am I correct in saying that that was the factor that promoted the adjustment around the Toledo base?

A. The same motive.

Q. But I ask you now the question again—in any other instance was the final action which I take it you stated in the form of some circular to your trade—

A. To our trade.

Q. —was that—have we stated the way that that was brought about, or is it true or not true that the elimination of the trucking limits was brought about by

11264 conscious express agreement between the various mills?

11265 A. There was no agreement, and I think that Huron was the only one that expressed it. I mean we put it in—

Trial Examiner Norwood: With an understanding?

The Witness: Well, I don't think any understanding —no—that we ever felt changed conditions. We changed, as we have done, we changed the—didn't like Lucas County. Well, when we changed it, then there was too much pressure, we withdrew it, and then we changed it again, and it was quieted down—.

11266 Mr. Smith: Will you read the last question? Are you referring to the one I just asked?

Trial Examiner Norwood: The question you just asked, the objection is sustained.

Mr. Smith: Very well.

11267 Q. Well, now, Mr. Crapo, what has been the policy of the Huron Company, as you understand it, as to making either a price f. o. b. mill or making a delivery price?

A. Well, we make a delivered price because I think that in nine cases out of ten that is what the customer wants.

11268 By Mr. Smith:

Q. Mr. Crapo, will you continue?

A. How far had I gotten?

(Record read.)

A. Well, now, that is the price that is broadcast.

11269 Now, of course, in distributing any article, there is the two different theories as to whether you buy it delivered or whether you cash and carry it.

A. I think the policy is clear. The policy is to print and circulate the delivered price, but in no case that I can remember, when a person wanted a mill price, did we ever refuse to give it to him. They are so infrequent. If I could add to that.

Q. We will pass that. I want to refer you again to this letter of July 29, 1936, which is Exhibit—is that 418?

Mr. MacIntyre: 418-A to D, Mr. Smith.

By Mr. Smith:

Q. There is one paragraph in this letter, the second paragraph, of Exhibit 418-C, which begins with the words, "Problem is." Will you refer to that? This one here (indicating).

A. Oh.

Q. "Problem is."

11270 A. You want me to read it, or does everybody know it?

Q. You read it before I ask you about it.

A. "Problem is what can the Huron do to better its situation. The Cement Association or the Cement Institute have developed no distinguished high priest"—

Mr. Wooden: "Disinterested."

A. (Continuing) "—disinterested high priest or college of cardinals, whose word would carry weight as in the case of the Pope to Father Hogan. In fact, the interest of the Cement Association seems to be limited to the collecting of the greatest amount of dues which the Association can spend to stimulate the use of cement. They have little interest in the fair play of their members, only in the prompt collection of dues. It would seem that some disinterested [redacted] brother in the cement industry, such a one as Mr. Lober, might smooth this seeming impasse out, but no such big brother has yet appeared."

By Mr. Smith:

Q. Now, was it not a fact that at the time of the writing of this letter Mr. Affleck's company was a member of the Institute?

A. I have no personal knowledge, except from the published records.

Q. Well, they indicate that Universal was a member, do they not?

11271 A. I think so.

Q. Did you at any time after the writing of this letter have anyone approach you from the Cement Association suggesting that they would in any way act to straighten out the complaint that you were making here?

A. No, no response to the letter.

Q. You never heard, then, from any official of the Institute suggesting that they would interest themselves in this complaint that you were making to Mr. Affleck?

A. No intimation.

Q. You didn't take it up with the Institute, yourself?

A. No.

Trial Examiner Norwood: Did you answer that?

The Witness: No, I did not.

By Mr. Smith:

Q. Will you read the next paragraph?

A. "The interested by-stander generally runs to a policeman for protection, but the Huron was reluctant in taking such a course without careful thought. What is the

best law on which to rely? Before what jurisdiction should the matter be presented, the Federal Trade Commission or the court? It would appear that the Institute should be interested in any procedure initiated by Huron. There will probably be some time when Huron can no longer take this situation lying down. Its action should then be the wisest for the whole industry independent ac-
11272 tions similar to that made by the Wabash Company are likely to arise in the future in any locality."

Q. Now, the quotation you are making, you are reading from a letter, a copy of which was sent to Mr. Young, was it?

A. A copy to Mr. Young.

Q. Did you ever hear from any official of the Institute or any member of the Institute with any suggestion that your complaint could be presented to the Institute for action?

A. No.

Q. I think you have already said that Mr. Young did not answer the letter?

A. That is right.

Q. And Mr. Affleck did not answer the letter?

A. I didn't say that, but I will now, got no response to the letter.

Q. You never followed up this suggestion that you might take the matter into the court or into the Federal Trade Commission, did you?

A. Not with them, but I was perplexed which way best to take it.

Q. Well, you didn't.

A. But take no action.

Q. You took no action either way.

I want to direct your attention now, Mr. Crapo, to the installation of the so-called Michigan plan that you
11273 have referred to on direct examination, which I think you said you put in the Huron at the beginning of 1937, and that it went out at the beginning of 1938?

A. No, the end of—

Q. The end of 1937?

A. Yes.

Q. Now, as I think you testified, that was a flat delivered price all over Michigan?

A. Yes.

Q. You at that time had your main plants and auxiliary plants in Michigan at what points?

A. We had a plant at Alpena and one at Saginaw and one in Detroit, and sold for—had the sales—I mean, we were the sales distributor of the Wyandotte plant, and the Muskegon plant was in the process of construction.

Q. Was the steamer over there while it was in the process of construction?

A. The steamer was there.

Q. So you had the storage at Muskegon?

A. Yes.

Q. Well, then, roughly, then, is this true, that the consuming centers of cement, consuming points, the main consuming points of cement in Michigan, the lower peninsula, could then be served with about equal—how do I want to phrase that? Strike that.

11274 These several plants were on the boundaries of Michigan?

A. Yes.

Q. So that each consuming point in Michigan, roughly speaking, could be reached from one or the other of those plants?

A. Yes, sir.

Q. At a moderate mileage?

A. That is right.

Q. Was it your theory that that plan of a flat price might be feasible because the distribution of the storage plant would permit distribution all over Michigan?

11275 A. Would permit that.

Q. That price took no basing point price, so-called, into consideration, whatever?

A. None.

Q. And will you tell us again why it was that at the end of the year that plan was discontinued?

A. Well, we discovered that there was more variation in the trucking cost than we thought. We discovered that particularly out at Muskegon, that the average cost of the haul was greater, and it was rather unjust to the other people that came in there. I mean the price was down. They met it. But the price was really too low in that section than some of the others, so we went back to the basing point in order to treat each territory on its own economies.

Q. Take, for instance—maybe we could make that a little clearer. Take Muskegon.

A. Yes.

Q. You would truck further than a reasonable net return to you would permit?

A. The average truck haul was very much larger in Muskegon than it was in Detroit.

Q. Yes.

A. Grand Rapids. I mean, the thing—we forgot—what we forgot was that in the bigger cities, why,
11276 that was a pretty heavy truck job to get it into Grand Rapids and beyond.

Q. So that by the end of the year you had found that the plan had not resulted in more sales and did result in more expense?

A. More expense.

Q. Does that fairly state the reason for which it was discontinued?

A. Yes, yes, completely.

Q. Did any other cement mills put up a similar plan?

A. I don't think so.

Q. Was there any consultation with any other cement mill when you instituted this plan?

A. No consultation.

Q. Was there any consultation with any other cement mill when you withdrew the plan?

A. No, no.

Q. Now, some reference has been made, Mr. Crapo, to the Aetna and the trucking practices of the Aetna, and of the Huron.

Can you state whether or not at any time in the history of your business, the trucking practices of the Huron and those of the Aetna coincided?

A. I have no recollection that they ever did coincide.

Q. Is your recollection to the contrary, that they never did coincide?

11277 A. That is quite strongly my opinion.

Q. Now, when I say "trucking practices" I include in that the area over which truck delivery is made, and the charges—

A. Yes.

Q. —for trucking.

A. Yes.

Q. And I include also the practice of the Huron to offer either truck or rail delivery to all its customers?

A. Yes.

Q. Are there any other practices in connection with trucking that we ought to include in that to determine whether or not Aetna and Huron had similar practices?

Mr. Wooden: Whether they made the same freight by rail or by truck as by rail, the same delivered price?

Mr. Smith: I think I covered that. The Huron offered the option of truck or rail delivery.

By Mr. Smith:

Q. There is no other practice you can think of connected with trucks except those I have covered, is there?

A. Well, the Huron's was simple. There was a price, and the option, rail or truck, limited by an area which we could get.

Trial Examiner Norwood: That is already in.

11278 The Witness: Yes. Well, now, we didn't coincide with Aetna on those figures.

Q. Mr. Crapo, we have referred to the trucking practices in Oswego and in Toledo, and the same general practices of the Huron obtained in Cleveland as to trucking?

A. My recollection.

Q. Yes.

Was trucking in existence by any other mill when you came to Cleveland?

A. For a great many years we shipped our rock to Builders' Supply.

Q. That is before you obtained the plant here?

A. Well, even after. They did all the delivering to the customers.

Q. I see. But no other competing cement mill?

A. No other competing cement mill.

Q. So you really were the one that instituted the

11279 trucking; is that true?

A. Well, that's my impression.

Q. How about Buffalo?

A. We originated that, but for months we made no truck delivery because no dealer—or even contractor—would order. All ordered it by rail.

Q. Did that finally wear out?

A. Well, that broke down, because some truck driver, an Irishman, the car wasn't placed, he asked if we would load it, and said yes, and trucked it down to the job, and he said, "Why hasn't it all been done that way?" He said, "It is easier for me to take it from the plant down to the job than it is to unload a car that costs somebody to place

$15, to put it farther off than your plant was." We said we thought that was good sense. I think that was the seed that started the break down there.

Q. And then after that you continued the trucking within the Buffalo area?

A. The Buffalo area. It is not heavy, I know.

Q. How about—there was no agreement there?

A. No.

Q. As to trucking with any competitor?

A. No.

Q. How about Milwaukee? Was there any agreement there with any competitor as to trucking?

11280 A. None that I know of.

By Mr. Smith:

Q. Were you the originator of the trucking in Milwaukee, or was there some other cement mill originated there?

A. Well, when we went in there, my recollection is that everybody from the outside, rail.

Q. Yes.

A. We were the only place with a track.

Q. That is, your plant was the only one on the water side?

A. On the water side.

Q. Where trucking of water-borne cement could be instituted?

A. We were the only plant that had a substantial stock of cement.

Q. I see.

A. For sale.

Q. Yes.

A. Now, Duluth, your figures indicate, I think, that Duluth, that there is less trucking into Duluth than any other place. But you do truck from your plant there?

A. There is another under—or controlled by Cutler Magner, who handled our cement. I think sometimes

11281 they truck and sometimes they don't. I don't know.

Q. And they distribute over a wide area?

A. Well, they distribute to the Northwest.

Q. To the whole Northwest?

A. Yes, but Duluth.

Q. Is there any way we can get on the record any estimate of the radius of their distribution?

A. Well—it is on the record, and I think that is as far as we ought to be able to stray over there.

Q. Well, you go quite a ways down into Minnesota?
A. Well, we go into Minnesota and sometimes out in Iowa.

Q. In other words, your distribution there is over a much wider territory than any other of the packing plants?
A. Yes.

Q. I want to go back to a question as to that Cleveland situation, when the price went to 95 cents. What effect did that price have on your distribution in Cleveland when it was in effect?
A. It eliminated our volume; we sought no sales.
Q. You sought no sales?
A. No.

Q. Over how long a period of time was it that you practically withdrew from Cleveland?
A. Well, I couldn't say how many months, but I did make some figures up, and I found that we, during
11282 the time that I had the figures, that there was only one carload every two days.
Q. That would be a very small amount there—
A. Oh, terrible.

Q. Let us see, have we covered all the plants? No, we have not covered all the plants.
You have already spoken about trucking in Muskegon; they did truck there?
A. Yes.
Q. And how about the Saginaw plant?
A. The Saginaw plant went in after the Bay City-Aetna plant was installed, and they were trucking heavily. We trucked just as soon as we got into Saginaw.
Q. And have continued?
A. Since.
Q. Since that time?
A. Yes.

Q. Now, it was in that area that you came in conflict with Aetna, was it?
A. With Aetna.
Q. And it was in that area, during that period of time, that you had the conflict with Aetna, that you offered the option of trucking or by rail deliveries to all of your customers?

A. I doubt whether Aetna had anything to do
11283 with that; probably it was about that same time.
Q. It was about that time you offered?

A. Oh, we offered—oh, we offered when we went up there, yes.

11290 By Mr. Wooden:

Q. They were representatives of what companies?

A. Of two companies.

Q. What companies?

A. One was the Marquette Company and the other was the Volunteer.

Q. In that connection did they say they were fearful of reprisals if they did make that $1.25 price?

11293 The Witness: The word "reprisals" was not used. I used that word in writing the letter that Mr. Wooden has before him, as being what I considered a reasonable interpretation of what they said to me.

Trial Examiner Norwood: Well, will you tell us how they said that, Doctor?

The Witness: I cannot in either cases give the name of the man who said it to me. In the case of the Marquette Portland Cement Company, there were two of their representatives in my office. I cannot give the name of either of them.

In the case of the Volunteer Portland Cement Company, I talked both to the president at sometimes and to the manager at some times.

By Mr. Wooden:

Q. Was the president Mr. Hanahan?

A. Yes.

Q. Who was the manager?

A. I think it was Davis—Lewis, rather. Lewis.

11294 Q. Dr. Morgan, were these two men who you referred to as representatives of the Marquette—had you dealt with them on previous occasions?

A. I had seen them once or twice before.

Q. In connection with what?

A. With the purchase of cement for the T.V.A.

Q. Did either of them state what his position with the Marquette Company was?

11295 The Witness: In the case of the Marquette Portland Cement Company, two of their representatives, who had been in my office at least once before, were talking with me concerning the purchase of cement by the

T.V.A. I regret that I do not recall the name of either of them.

Trial Examiner Norwood: Well, how was it that they were in there? Had you written to the company or were you negotiating with the company, and what were the circumstances surrounding their being there?

The Witness: It was during this period when a study was being made of the cost of cement that they came into my office, and the discussion arose promptly as to their ability to ship cement by water to some of our jobs, their plant being on the water at Cape Girardeaux, Mo.

11296 And in the course of that conversation they indicated that in their opinion they could furnish cement at $1.25 F. O. B. mill—well, the situation is this: I think bids were usually estimated on the basis of rail haul.

Trial Examiner Norwood: Yes.

11299 Q. Dr. Morgan, do you recall having had any dealings, while with the T.V.A., with Mr. F. L. Jaeger, J-a-e-g-e-r, representing the Marquette?

A. I do not recall.

Q. (Showing paper to witness) Showing you papers marked for identification as Commission's Exhibits 1492-A and 1492-B, will you state what that is?

A. Exhibits 1492-A and B is a copy of a letter dated September 13, 1934, from myself to Morris Leeds, who was representative of the T.V.A. on a committee to consider the price of cement.

Q. Is that your handwriting at the bottom of the second page?

A. Yes.

11303 Trial Examiner Norwood: I shall ask the Doctor to tell us what was said with regard to that $1.25 bid,

11304 whether or not it was ever made, and if not made was any reason given for the failure.

Mr. Zimmerman: And by whom, certainly.

Trial Examiner Norwood: By whom?

A. (Resumed) As to whether the—a bid of $1.25 at the mill was made I do not recall, because I do not recall how the Marquette would figure out at the mill.

A. (Resumed) In the case of the Marquette Company one of the representatives said that they believed they could sell that cement at a profit at $1.25 a barrel, but that they hesitated to do so because if they should do so they feared that they would incur the displeasure of others in the industry, and that is as far as my definite memory goes.

In the case of one of the other—and in the case of the conversation with the Volunteer Portland Cement Company, the substance was the same, in the case of one of these, and I can't recall today which, there was—

Mr. Leisure: (Interposing) Just a moment, Dr. Morgan, please.

Now, I object to this testimony if the Doctor
11305 cannot—

Trial Examiner Norwood: Now, if you will let him complete his answer you may then make the motion to strike it.

Mr. Leisure: I wanted to object before he finished.

Trial Examiner Norwood: The objection is overruled.

A. (Resumed) In the case of one of these companies the statement was made that they feared that it would be made difficult for them to get business. So far as I can recall, that is as definite as the statement was made, and this has been something over four years ago, and I haven't clearly in mind the contents of the conversation. I do not think—I am quite certain it did not go to any specific actions except further than it would be made—that they might find it difficult to get business.

By Mr. Wooden:

Q. What did you understand by that,—difficult to get business? How, or where?

A. Well—

Mr. Leisure: Now, before we go to the next question I want to move to strike the Doctor's last answer, appearing at this late date he has nothing to refresh his recollection as to whom it was that had made the statement, and,
11306 therefore, cannot be received as against any of the Respondents, and should not be admitted in evidence, and I think also because I was not allowed to object before he said it, should not be only excluded but should be expunged from the record.

Trial Examiner Norwood: The motion is denied.

Now, will you kindly pass that paper over to Mr. Zimmerman that you refreshed your memory from?

The Witness: What is the question?

By Mr. Wooden:

11307 The witness identified Com. Ex. 1493 A, B, C, and D as copies of a memorandum of a telephone conversation between the witness and Mr. Blaine Smith, of Sep-

tember 26, 1934. The witness' recollection is that the conversation was taken down by his stenographer during the conversation, and then checked with Mr. Smith afterwards; if he recalls correctly.

Mr. Wooden: I will offer these in evidence, Your Honor (indicating papers marked for identification as Exhibits 1493-A to D, inclusive).

Trial Examiner Norwood: Were they marked?

Mr. Wooden: Yes, 1493-A to D, inclusive.

(Mr. Wooden hands Commission's Exhibits 1493-A to D, inclusive, to Mr. Leisure.)

Trial Examiner Norwood: Any objection?

Mr. Zimmerman: I haven't finished yet.

(Mr. Zimmerman referring to and examining Commission's Exhibits 1492-A and B.)

Mr. Leisure: We have no objection, Your Honor.

(All Counsel examine the last two exhibits.)

Trial Examiner Norwood: Any further objections, or any objections?

Received as marked, Commission's Exhibits 1493-A, B, C, and D.

11308 (COM. EX. 1493-A, 1493-B, 1493-C, and 1493-D was offered and received in evidence.)

Cross-Examination by Mr. Leisure.

Q. Dr. Morgan, this Commission's Exhibits 1493-A, B, C, and D, is a memorandum of the telephone conversation that was taken down at the time it happened between you and Mr. Blain Smith; is that not true?

A. Yes.

Q. Now, I observe on the last page, Dr. Morgan, that Mr. Smith says:

"One more thing; there is a question of legality involved in a group of manufacturers getting together to discuss prices. We want to ask you if you will notify the attorney general and the Comptroller General of the procedure we have taken. We do not want to lay ourselves open to any charge of violating the law. It might look like

11309 collusion."

And the answer of Mr. Morgan: "All right."

At the time of that conversation, Dr. Morgan, you were not trying to make any case against Mr. Blain Smith, were you?

A. No, and I would like to add that this—this memorandum here was taken from my files without my approval, and presented here without my approval. It seems to me that it is sort of a confidential memorandum for my own information.

Q. As a matter of fact, what you were really trying to do, you were trying to get cement at the cheapest price that you could buy it for the Government; is that not right, Dr. Morgan?

11310 A. At the cheapest fair price we could buy it.

Q. Precisely. You wanted it to be the fair price, and you wanted it to be the cheapest price that you could get that was fair?

A. Yes.

Q. And in so doing you had this conversation with Mr. Blain Smith, asking for his cooperation, and to submit bids according to your formula; is that not true?

A. Yes.

The Witness: That last paragraph, I would like to make a brief statement about it, if I may.

Mr. Leisure: Yes.

Trial Examiner Norwood: Certainly; go ahead.

The Witness: May I have that?

Mr. Leisure: Yes (handing paper to witness).

By Mr. Leisure:

Q. You mean the one I read, sir?

A. Yes.

Trial Examiner Norwood: The last paragraph in Commission's Exhibit 1493-A, B, C, and D.

11311 A. My remembrance is as follows:—that at the time the Chief Counsel of the Authority was Mr. Fly, who had previously been an assistant to the Attorney General, and knew the situation in the Department of Justice, as I recall—

By Mr. Leisure:

Q. That is, he was familiar with it at the time; is that correct, Dr. Morgan?

A. He had recently come from the Department of Justice, as I understand, and it seemed to me that a contact with the Department of Justice would best be made through the Chief Counsel of the T.V.A. who was also recently from the Department of Justice.

11312 and that I referred Mr. Blaine Smith to this question of going before the Attorney General.

By Mr. Wooden:

Q. Do you know whether or not Mr. Blaine Smith and Mr. Fly ever did get together on the proposition?

A. My understanding is this; that Mr. Blaine Smith prepared a statement of the negotiations, of the relations up to that time, and presented that statement to Mr. Fly with the suggestion that it would be presented to the Attorney General, and that Mr. Fly took the position it would not be necessary.

Q. So it was not presented to the Attorney General?

A. And I have here a draft, as I recall, of the statement that was prepared by Mr. Blaine Smith with a suggestion that it be presented to the Attorney General, and I don't know whether there is any point in bringing this in or not, but this is just a review—this is a review of the matters up to that time.

11313 *Cross-Examination by Mr. Leisure.*

Q. Dr. Morgan, I show you a document I hold in my hand, being Respondent's Exhibit 48-A to F, entitled "Draft of Memorandum for Department of Justice," and ask you whether or not that is the memorandum which you have just referred to as prepared by Mr. Blaine

11314 Smith with the suggestion that it be referred to the Department of Justice?

A. Yes, it is.

Q. Is this the memorandum?

A. Yes.

Redirect Examination by Mr. Wooden.

Q. Do I understand, Dr. Morgan, that when you say Mr. Fly thought it unnecessary to present the memorandum to the Department of Justice, that, in fact, it was not presented to the Department?

A. My memory on that is not as clear as it should be. My memory is that on taking it up with Mr. Fly, it was his opinion that it was not necessary to follow this matter up with the Department of Justice.

Q. And, so far as you know, it was not followed up?

A. I don't recall that it was.

Mr. Leisure: We offer it in evidence, if Your Honor please.

(RESP. EX. 48-A to F, inclusive, was offered and received in evidence.)

11317 J. L. DANKEL, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am a sales representative of the National Fireproofing Corporation, with general offices at Pittsburgh, Pa. I have held that position during the last year and a half. Previous to that I was salesmanager for the Bessemer Limestone and Cement Company at Youngstown, Ohio. My service with that concern terminated July 1, 1936, and began,
11318 as near as I recall, in the Spring of 1920. I cannot give the exact dates when I was salesmanager of that company. I was assistant salesmanager for a number of years and then salesmanager. The duties remained practically the same over a period of approximately 10 years. I cannot say definitely whether I was assistant salesmanager or salesmanager during the period 1929-1932, though I would say that the duties which I performed during that period were not different than the duties which I
11319 performed during 1935-1936 as salesmanager. They were essentially the same. I had previously, since 1920, been connected with the company—in the traffic end originally, then order and from there into sales correspondence, into assistant salesmanager and then salesmanager.

Q. What is the territory in which the Bessemer Company makes sales of cement, Mr. Dankel?

11322 A. Well, when I was identified with the company, we endeavored to market our product in practically all of the State of Ohio, western Pennsylvania, the northern part of West Virginia, and the northwestern section of New York State.

Q. Was Cleveland, Ohio, one of the markets into which Bessemer made sales during your term as assistant sales manager of the Bessemer Company?

A. It was.

Q. Can you state approximately the tonnage or barrel-

age sold by the Bessemer into the Cleveland market and vicinity annually?

A. This barrelage fluctuated from year to year. It would be hard to state it.

Q. Let us take the year 1930. Can you say whether the barrelage was as much as 100,000 barrels during that year?

A. I could not recollect that one particular year, but we have shipped over, I know, 100,000 barrels in a given year into the Cleveland market.

11323 Q. Would you say that would be the case for more than one year previous to 1930?

A. I can't say as to 1930, but I can say, if my recollection serves me right, that we have shipped over that amount a number of years.

Q. Was Akron, Ohio, also a market into which Bessemer shipped a substantial quantity of cement?

A. Yes, we considered it a very favorable market for our product.

Q. What about Youngstown, Ohio?

A. Likewise.

Q. Pittsburgh, Pennsylvania?

A. Considered it also a favorable market.

Q. Portsmouth, Ohio?

A. That was getting beyond our—what we figured our natural shipping range. We wouldn't consider that what you might say a favorable market.

Q. You did make shipments into the City of Portsmouth, however?

A. We have shipped some barrelage into the town, yes, sir.

Q. What about Dayton, Ohio?

A. We have shipped tonnage into Dayton, Ohio.

Q. Columbus, Ohio?

A. Columbus, Ohio.

Q. About how far from Cleveland is the plant of
11324 the Bessemer Company located, Mr. Dankel?

A. Approximately 75 miles.

Q. About what, as you recall it, was the freight rate during 1930 or '31 from the Bessemer plant to Cleveland; that is, approximately? I don't ask you to state exactly. Railroad freight I am talking about.

A. Around 35 cents a barrel.

Q. Approximately 35 cents, as you recall it?

A. Approximately 35 cents a barrel.

Q. How many salesmen did you have under your supervision working for the Bessemer Company, Mr. Dankel?

A. The number of salesmen varied from year to year depending on what—

Q. Well, let us take 1930. Can you recall approximately the number you had that year?

A. I do not.

Q. Was it as many as five?

A. Yes. We would have five, over five; that is, we would have more than five.

Q. Will you state whether or not in connection with your price instructions to those salesmen, you made references to or furnished them with lists of basing points, and basing point prices?

A. I don't understand your question, Mr. MacIntyre.

Q. I asked whether in connection with your in-
11325 structions, price instructions to your salesmen, you furnished them with lists of basing points, and basing point prices?

A. Yes, sir.

11329 J. L. DANKEL was thereupon recalled as a wit-
ness for the Commission, and, having been previ-
11330 ously sworn, testified further as follows:

Direct Examination (Continued) by Mr. MacIntyre.

Q. Will you please state the reason why that you furnished them with such lists?

A. To place the men in position to quote prices on our products.

Q. That is, on the cement products of the Bessemer Company?

A. Yes, sir.

Q. How were the men instructed to use those basing-point price lists to quote on those products?

A. The combination of the lowest mill base plus the freight rate and package.

Q. In other words, you instructed them to take the basing-point prices that were shown on the list and to apply them into a combination of freight rates and a combination that was the lowest basing-point price between a certain point, and that basing point and the freight,
11331 made the price that you wanted them to quote?

A. Yes.

Q. Now, what list of freight rates did they use in figuring out the lowest combinations along with the basing-point price list that you furnished them?

A. We furnished them a freight rate book showing the freight rates from the various mills in the district in which we were endeavoring to market our product.

Q. That is, a freight rate book for each of the States—

A. Yes.

Q. —in which they traveled?

A. Yes.

Q. Can you name some of the basing points that were included on the lists that you furnished them?

A. Well, there were Pittsburgh, Cleveland—

Q. When you speak of Pittsburgh, do you refer to Pittsburgh or Universal, the location near Pittsburgh.

A. It was sometimes referred to both, as meaning one and the same point.

11332 Q. The Universal—

A. The base point, yes.

Q. What about Ironton?

A. The base point at Ironton.

Q. Toledo?

A. Yes, there was a basing point at Toledo.

Q. Buffalo?

A. Yes, sir.

Q. Limedale?

A. Yes.

Q. Mitchell?

A. Yes, sir.

Q. You mentioned freight rate books,—were those the freight rate books that had been prepared and sent to the Bessemer Company by the Cement Institute?

A. We received Cement Institute freight rate books, and we maintained tariffs from which we also—which were also accessible for checking freight rates. We furnished our own mimeographed sheets to the salesmen covering the freight rates that we authorized them to use.

11333 Q. Were they copied from the Cement Institute's freight rate books?

A. Well, that is a matter for the traffic department that made up the freight rates. At times I assume that they were, and at other times they may have been taken from the actual tariffs.

Q. Why did you furnish your salesmen with the freight rate books and th basing-point lists?

A. To place them in position to quote prices on our product.

Q. At the different locations they visited and solicited business from dealers?

A. Yes, sir.

Q. Now, did you note during the years 1930 and 1931, as well as the years previous to those two, whether other companies with which you were in competition in making sales of cement, sold at or quoted delivered prices at the various locations at which you attempted to sell cement, at prices different or at the same prices that you quoted them?

A. There were times when we found different prices; yes, sir; during the period I was identified with the company, I would say, yes, there were different prices.

Q. At very many of those locations in the territory in which your salesmen operated?

A. Are you—I don't quite get whether you are 11334 referring to a general period over a time or—

Q. Well, let us take the year 1930.

A. —or a specific job?

Q Let us take 1930, and ask you if you found that any different prices were made by any of your competitors from the prices that you and some of your competitors made on any specific jobs, say in the Akron or Cleveland territory?

A. I couldn't say to the exact dates, but no doubt there were price changes during that particular year.

Q. Well, did you note any deviations, so to speak, from the prices that you had been quoting, by any particular one of your competitors on any particular job that you were seeking to sell in Cleveland, or in Akron?

A. It is very likely that we did, but I would have to refer back to specific jobs, and our information that we may have touching on what competition was quoting during that period.

Q. I am asking you about a condition, rather than a particular instance, Mr. Dankel.

Do you recall, as a condition, that there were a good many deviations by any one of your competitors in, say, the Cleveland or Akron territory, during 1930—

Mr. Leisure: I object.

By Mr. MacIntyre:

Q. —from the prices that you had been quoting?

11335 Mr. Leisure: I object to the conditions. If the witness has a recollection as to specific instances, he can tell us, but to attempt to draw upon his imagination and state conclusions, I object. That is what the question calls for.

Trial Examiner Norwood: The sales conditions.

Mr. MacIntyre: The sales conditions, which include conditions—prices under this man, and the salesmen under competitors.

Trial Examiner Norwood: Yes, he may answer the question.

A. If my memory serves me correctly, there are different prices used at Cleveland during that period.

By Mr. MacIntyre:

Q. Will you state what company,—was Standard Portland Cement Company one of the companies?

11336 A. I don't believe I can specifically state that the Standard Portland Cement issued new prices during that period.

Q. Well, I am not talking about a new price list, or a new list of basing-point prices. I am talking about the deviation from the combination that you got when you added the freight from the freight rate book, and the basing-point prices that were shown on the list that you had issued to your salesmen. Did you find deviation from that on the part of the Standard Portland Cement Company, or any other of your competitors?

A. Very likely that we did, but I can't recall definitely without checking our records.

Q. Do you recall whether you found any such deviations on the part of the Pittsburgh Plate Glass Company, which has a mill at Fultonham, Ohio?

A. You mean by deviations prices different from prices we were quoting?

Q. That you, in general, or your competitors quoted on a particular market?

A. As we found a level to be in line with what we found competition—I would say we found times that they were different from ours.

Q. That is, the Pittsburgh Plate Glass was different from yours?

A. I couldn't say in any particular instance.

11337 Q. I am talking about different prices.

A. Yes.

Q. What about the Standard Portland Cement Company, as to the same sort of a situation?

A. If my recollection serves me right, I would say yes.

11338 Q. Mr. Dankel, did you, in finding these deviations, about which you have testified, from the prices that you quoted, find them to have been lower than the prices quoted by you, and your competitors in particular markets, such as Akron and Cleveland?

11339 Trial Examiner Norwood: Can't you tell us that when Pittsburgh Plate Glass has deviated that it has been lower than the majority of bids, or higher?

The Witness: I can't testify to what every company has been doing on prices. That is impossible for any man to testify. At least, I cannot. I think there are times when we did find that. In answering these specific questions, regarding Pittsburgh Plate Glass, that we did find lower prices than we were quoting—that is, I am speaking of "we" as our company.

11340 Q. Yes. Now, what about the Standard Portland Cement? Do you find that they had quoted at times prices lower than you had quoted in particular markets?

A. The Bessemer Company; yes, sir.

11341 The Witness: May I add, I can't say in any particular market. I can't say in any particular market or any specific job that I do know there were cases where we did find lower prices, but I can say any one par-

11342 ticular market.

By Mr. MacIntyre:

Q. By those two companies, the Standard and the Pittsburgh?

A. Yes, I will say yes, sir.

Q. I thought the record showed the witness to have made that statement.

Q. Now, Mr. Dankel, I will ask you to state whether or not you found that other competitors of yours were found by you to have made different prices from or to your customers in markets in which you sold?

A. There is times when we found different prices than we had quoted; yes, sir.

Q. That is, on the part of the Standard and the Pittsburgh Plate Glass?

Mr. Leisure: No. The question was whether other competitors other than—

Mr. MacIntyre: Yes.

Mr. Leisure: And now Counsel says, when he has found others, he says they are the Pittsburgh Plate Glass and the Standard. That isn't the witness' answer.

The Witness: There have been times that we have found—we have had reports that some other of our competitors had quoted different prices than we quoted; yes, sir.

11343 By Mr. MacIntyre:

Q. One of those competitors was Castalia Portland Cement Company? Name all of them that you can, if you please.

A. I would say that Castalia was; yes, sir.

Q. What about Southwestern Portland Cement Company, Osborn, Ohio?

A. Yes, sir.

Q. Did you find that the Lehigh Portland Cement Company had made prices any lower than you in any of these markets in which you had sold; that is, deviations from the prices that you had quoted?

A. Not to my recollection.

Q. What about the Alpha Portland Cement Company?

A. Not to my recollection.

Q. What about the Huron Portland Cement Company?

A. I believe we found variations in prices than what we were quoting.

Q. What about the Medusa Portland Cement Company?

A. Not to my recollection.

Q. What about the Universal-Atlas Cement Company?

A. Not to my recollection.

Q. What about the Lone Star Cement Companies under the international system at that time?

A. Not to my recollection.

Q. In other words, the only companies that you

11344 can recall at this time as having made prices in deviations and lower than the prices that you had quoted were those that you have named; that is, the Standard, the Pittsburgh Plate Glass, the Castalia, Southwestern at Osborn, Ohio, and the Huron?

Cany you name any others?

A. No, sir.

Q. Now, I will ask you to state whether shortly after you found that condition as to the deviations in prices in 1930, that you found changes in basing-point prices in Cleveland, Ohio?

A. I can't remember any specific period, but there has been changes in the basing prices at Cleveland, Ohio; yes, sir.

Q. During 1931, can you recall if there were any changes made?

A. I can't recall any specific change. I would have to refer to our back records to ascertain that information.

Q. Well, can you recall whether or not during 1931 the price in Cleveland, Ohio, reached a level below a dollar on the Cleveland base?

A. There was a period when I do recall that the price in Cleveland, the base price, was below $1; yes, sir.

11345 Q. Can you recall whether or not that was before or after you found these deviations from your going market prices in Cleveland, deviations by the Standard Portland Cement Company and the Pittsburgh Plate Glass Company?

A. I can't say as to that.

Q. Can you state whether or not shortly after that a basing point price was established at the Standard's mill at Painesville, Ohio?

A. There was a base price established at the Standard Mill.

Q. Can you recall at what price?

A. I think it was $1.06.

Q. What about Fultonham, Ohio, the location of the mill of the Pittsburgh Plate Glass Company? Was there a base established there about that time?

A. I believe there was.

Q. What price was that?

A. As I recall, it was $1.06.

Q. What about Ironton, Ohio?

A. I think there was a base of $1.06 at that point.

Q. I will ask you if you can state—what about Osborn, Ohio? Can you state whether or not a base was established there at about that time, and, if so, at what level?

A. I can't say as to the time the base was established, but I do recall there was a base established of $1.06.

11346 Q. Now, Mr. Dankel, I will ask you to state what effect, if any, that you can see that the establishment of a base of $1.06 at Painesville and a base of a dollar or less at Cleveland, Ohio, had upon the shipments by the Bessemer Company, the one you represented into the Cleveland, Ohio, market?

A. Well, we were practically forced to withdraw from the market.

Q. Why?

A. Due to the resulting mill net we received during the period that base was in effect.

Q. What do you mean by "resulting mill net"?

A. Well, as I recall, it was necessary, due to the trucking situation that was prevailing at the time for—I am not definite about this—that we established a warehouse in Cleveland, and it was necessary for us to absorb, of course, the freight, which was approximately 35 cents, deducting that from the base price here, which would arrive at what our mill net would be.

Q. Well, about what was that, if you can recall?

A. Around approximately 50 cents.

Q. In other words, you received at your mill approximately 50 cents on shipments into Cleveland after the establishment of that low base here; is that what you meant to say?

A. Yes.

11347 Q. How much profit could your company make upon a price, if you can state, of 50 cents a barrel at its mill in Walford, Pennsylvania?

A. It is a loss. There is no profit.

Q. Do you know who established these bases at Cleveland, this low base of a dollar or less during 1931?

A. I would say the Lehigh or the Huron.

Q. The Lehigh or the Huron?

A. Yes.

Q. What about Painesville, Ohio, the $1.06 base there?

A. I think the Lehigh, as I recall, established that price.

Q. What about the $1.06 price at Fultonham, Ohio?

A. I think the Alpha Portland Cement established that base.

Q. What about the $1.06 base point price established at Osborn, Ohio?

A. I am not certain, but I think it was the Alpha Company.

Q. What about the $1.06 price established at Ironton, Ohio?

A. The Alpha Company.

Q. I didn't get the last answer.

A. The Alpha Company.

Q. Can you state whether or not, to your knowledge, Alpha Portland Cement Company had a mill lo-
11348 cated at Fultonham, Ohio, at the time that it had established that basing point price of $1.06 there?

A. They did not.

Q. What about Osborn, Ohio?

A. No.

Q. Can you state whether or not the Lehigh Portland Cement Company had a plant, a manufacturing plant at Painesville, Ohio, at the time it established this $1.06 price at that location?

A. No, sir.

Q. Has it ever had a plant there?

A. No, sir.

Q. To your knowledge has the Alpha ever had, or does it now have a plant at Osborn or Fultonham?

A. (Witness shakes head negatively.)

Cross Examination by Mr. Leisure.

Q. Mr. Dankel, did I understand you correctly, that for a period of time, whatever the period of time that Mr. MacIntyre was asking you about, that you and all of your competitors sold at one price, and Pittsburgh Plate Glass and Standard always sold at a lower price? Is that what you intended to convey in answer to Mr. MacIntyre's question?

11349 A. No, I did not.

Q. Did you intend to convey that Pittsburgh Glass and Standard were the only ones out of your group of competitors that ever varied the price during your period or connection with this Bessemer Company?

A. No, sir.

Q. In other words, were there changes in price at different times not initiated by Pittsburgh Glass and not initiated by Standard Cement during your period of 10 years' connection with the Bessemer Company?

A. I would say yes.

Q. Now, with regard to these bases, how do you figure

out, or how do you determine how a base is established, Mr. Dankel?

A. How do you determine how a base is established?

Q. When it is established.

A. Our men are in the field, within, I would say, 24 hours of a competitor's price change, which is generally broadcast to the trade. We know about it. We immediately hear from the various boys that are in the territory, our salesmen,—I mean to say who report in what they find, and we, of course, immediately check to find out how the price figures back on the freight rate to ascertain what the price change—where the base has changed.

Q. And in that way you can determine where the base is?

11350 A. Yes, sir.

Q. By figuring back?

A. Yes, sir.

Q. And what it is?

A. Yes, sir.

Q. Mr. MacIntyre asked you about your sales in Cleveland, and I understood you to say, "We couldn't sell in Cleveland." Then a moment later he asked you about your 50-cent net at the mill and asked you if you could make any money on that. I understood you to say that you did not sell in Cleveland. I would like to know now whether you did sell in Cleveland with a 50-cent net at your mill?

A. We did not actively sell in the market. We merely endeavored to retain the good will that we had previously established when the prices were more favorable to permit us to market in the area and make a profit.

Q. You didn't encourage sales in Cleveland?

A. We didn't encourage them.

11351 Q. At the 50-cent net?

A. That is correct.

Q. Now, as to these freight-rate books, did your salesmen actually carry the Cement Institute's freight rate books with them, or did they use them for checking purposes?

A. We did not furnish our men with Cement Institute books, as I recall stating here. We mimeographed our own, compiled our freight rates, and mimeographed them and furnished them to the men, and they used our own freight rate books.

Q. Then you used the Cement Institute's freight rate books for checking purposes; is that a fair statement?

A. Yes, we did, yes.

Trial Examiner Norwood: Well, those mimeographed rates you sent out, were they the same as the Cement Institute book?

The Witness: I would say that they were, Your Honor.

By Mr. Leisure:

Q. And would they also be the same as the official tariffs?

A. Yes, sir; of course, there would be mistakes creep in.

Q. And one or the other would be wrong, if they weren't the same, would they not be, Mr. Dankel?

A. Correct, under the filed tariffs.

Mr. Leisure: That is all.

Trial Examiner Norwood: Well, in case one were wrong and the other right, which would you fol-
11352 low? Which did you follow?

11352 The Witness: We followed the legal tariffs as published by the railroads and approved by the Interstate Commerce Commission, Your Honor.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Dankel, Mr. Leisure asked you whether or not in the light of a statement that you said that you couldn't sell or that you had stopped selling in the Cleveland market, that you did actually get a 50-cent net at your mill at Walford. Did you mean to say there that you had withdrawn for practical purposes but were just taking a few sales occasionally to keep good will? Was that your answer to him?

A. Yes, that is what it amounts to; yes, sir.

11353 (There was a discussion off the record.)

By Mr. MacIntyre:

Q. It was on those few sales that you took, then, in Cleveland, that you secured your 50-cent net at Walford; is that true? Is that what you meant to convey?

A. Yes, it was approximately 50 cents. It may have been one or two cents one way or the other, but it amounted to approximately 50 cents mill net.

Q. Now, Mr. Leisure asked you whether or not, when

you stated you had found lower prices, that you meant to state that the only lower prices you had found was Standard and Pittsburgh Plate Glass; that is, lower prices than yours.

Mr. Smith: He let Huron in on that.

By Mr. MacIntyre:

Q. I want to ask you now whether or not you can name any others than those two that you have just stated to him that you found to have quoted lower prices than your company in particular markets. Will you name all that you can, those you found to have been quoting lower prices than your company other than the Standard and the Pittsburgh Plate Glass?

Mr. Smith: Isn't that a repetition, Your Honor?

The Witness: I have already done that.

By Mr. MacIntyre:

Q. Well, we would like to have you state now, if you can recollect any others than the Standard and the
11354 Pittsburgh Plate Glass, and let us name them now so that we can make your answer to Mr. Leisure's question that much completer.

A. I believe I recall Castalia, Huron, Southwestern and Miami—Southwestern and Wabash.

Q. Any others?

A. I don't recall any others, no, sir.

Q. Do I take that to mean, then, that the others of your competitors, which included Alpha, Lehigh, Universal Atlas, Medusa, the Lone Star Companies, and the Penn Dixie, to have made prices that were not lower than yours, as you can recall at this time?

A. I can't—we never found, to my recollection, where they had quoted on a specific job, and that is what I am referring to when you say change in prices different than what we were quoting. Those companies—

Q. Now, Mr. Leasure asked you about changes in price. We have used the words "deviation in price" and "change in price."

Will you explain whether in your definition of those terms there is any difference?

A. Well, a change in price is what I would term a
11355 general broadcast by any manufacturer to his trade showing a change in price.

Q. A general change of price?

A. Yes.

Q. That is, over a considerable territory resulting from a change in basing point price?

A. It may be one individual market; wherever he broadcasts those established forms that we run into and are sent in to us by our salesmen to give us an opportunity to ascertain the price that is being quoted by our competition.

Q. Now, how is that different, if it is different, from the definition that you have attached to the words "deviation in price", such as you have used here this afternoon?

A. Well, it is used in the sense, on a particular job we have a given price quoted which is a price that we had used from checking the broadcast quotations, and we found certain companies had on that particular job had a lower price quoted.

Q. You mean, then, a deviation?

A. Without a general broadcast to the trade that is lower than—

Trial Examiner Norwood: Just one special transaction; is that the idea?

11356 The Witness: Yes, your Honor.

By Mr. MacIntyre:

Q. You mean, then, by that that a deviation is a difference from the lowest combination of basing point price plus the freight rate to a particular destination? It wouldn't be the resultant of the lowest combination of a basing point price plus the freight to a destination, would it? That is, I am attempting to get some understanding from you, a clear understanding, rather, from your definition of deviations in price.

11357 Mr. Leisure: Well, I think the question should be put, if Mr. MacIntyre wants to ask him about that, and not just to argue with him at length.

Trial Examiner Norwood: Yes.

The Witness: I thought I had given my explanation as to what I would understand the meaning of the word "deviation."

By Mr. MacIntyre:

Q. A deviation from what? That is what I am attempting to have you to state now.

A. From the general price level that has been prevailing in the market.

Q. That answers the question.

Now, Mr. Leisure also asked you whether or not you had found Standard Portland Cement Company and Pittsburgh Plate Glass Company making price changes. In the light of the definitions that you have given, your definitions that you have given on changes in prices, and your definition on deviations in prices, will you say that Standard Portland Cement Company or the Pittsburgh Plate Glass Company, to your knowledge, ever led in basing-point price changes as you defined them here this afternoon?

A. I don't recall that they did.

Q. Were they, in fact, basing-point mills before they were made so by Alpha and Lehigh, as you have stated here?

11358 A. Not to my knowledge.

Q. Now, I will ask you also, have you known Lehigh Portland Cement Company, the Alpha Portland Cement Company, and the Universal-Atlas Portland Cement Company to make basing-point price changes, to your knowledge?

A. I believe I answered that.

Q. You have stated—

A. Previously.

Q. —you knew of specific instances where Alpha and Lehigh had made some. Now, to your knowledge, has not Universal Atlas also led in price changes at basing points?

A. Not to my knowledge; no, sir.

11359 Cleveland, Ohio,
November 18, 1938.

11361 S. T. CRAPO, a witness having been previously called by and on behalf of the Commission was recalled for further examination, and, having been previously duly sworn, testified further as follows:

Cross-Examination by Mr. Smith.

Q. Mr. Crapo, I refer you to page 11021 of the record, eighth line from the bottom. The record reads as follows: "There is no fit limestone in Michigan, the light measured mills". Evidently a misunderstanding. What mills were you referring to?

The language continues: "They get that out, but
11362 then there was artificial, the Peerless gets its limestone from northern Michigan by boat," and so forth.

A. That meant Marl.

Q. Marl Mills?

A. The light may have meant Marl, but I don't—

Q. Yes, for example, where are some of the Marl mills in Michigan?

A. Well, Marl mills are Aetna, Fenton, and Peninsula; I guess that they are consolidated now. And I think all the rest of them have been buried, I mean, a long string of them.

Q. And again at page 11067 of the record, in discussing the truck deliveries in Cuyahoga County your answer was: "Oh, all I can say on that is that whatever our trucking schedule is, that was what we agreed to."

What did you mean by that, and whom were you referring to when you said "we agreed"?

A. Well, the Huron Company officers.

11363 Q. You continued: "Of course when you go into a place and have no limit, why, I mean ours—but that was fair between the—I don't know whether I am satisfied with it now, but that is a matter of all our trucking limitations. We are perfectly willing to furnish as they stand now."

You were referring to the furnishing of the information, as I understand it?

A. The information.

Q. And the next question was: "Did the criticism cease after you limited it to Cuyahoga County?

"A. Well, it is a difference of opinion, which I don't think will ever cease."

That is; there is still dissatisfaction in the trade with the trucking situation in Cuyahoga County—is that what you meant by that?

A. This agreement as to the practical economic limits to which trucks should go.

Q. That is a matter of argument everywhere?

A. That is a matter of argument as to—

Q. With the truck people, themselves?

A. Why, I would judge so from their varying rates.

Q. Yes, and with the dealers in your organization?

A. Yes, with the dealers.

Q. By the way, Mr. Crapo, what has been the policy of the Huron with respect to what has been its selling
11364 policy with respect to distribution of its cement as between dealers and various other parts of the public?

A. Well, the Huron prefers to deal with dealers.

By Mr. Smith:

Q. How long has that been the policy?

A. I think from the beginning because the dealer puts it on the spot where it is needed. We are relieved of all that trouble.

Q. Are there exceptions? Have there been exceptions made by Huron to that general policy of dealing through dealers?

A. We have made for a number of years excep-
11365 tions. The Government has ruled they will not buy through dealers; their quantity is too big. The railroads won't; the highway departments won't. And dealers cannot handle and really do not expect to be in the middle in that contract, that type of contract.

Q. And since Huron has been established, has it maintained that general policy of dealing only through dealers with these general exceptions that you have named?

A. General exceptions, yes.

Q. I think you already referred, but I would like to refer again to whether or not you have always, and do now, when asked, sell the customers who desire to take delivery at your plants?

A. When I think over a long period of years, for instance, the lighthouse department, if that is the right name,
11366 they buy cement at our docks. Where they take it to, we don't know. You take—well, it largely comes down, if a man shows us that he has got better transportation to get it from the mill to the job, better than we can furnish, we will sell him at the mill.

Trial Examiner Norwood: In that case, do you make any additional charge for delivery to trucks at the mill?

The Witness: Of course, that is over a good many years. I think if we get the base at the mill, why—

Trial Examiner Norwood: I say, do you?

The Witness: No, oh, no, not additional; in my opinion I would say no.

Trial Examiner Norwood: Never have?

The Witness: That is my recollection.

By Mr. Smith:

Q. That is, you are content to get the price, the net price that you want to recover at your mill? You have been content to get that?

A. To get that, yes.

Trial Examiner Norwood: Is that net price the same net price that you would get on a railroad shipment?

The Witness: The same, yes.

Mr. Smith: Yes. Net recovery, you mean?

Trial Examiner Norwood: Yes.

11367 Mr. Smith: I think that is all, your Honor.

Trial Examiner Norwood: Examine him. Any further cross examination?

Mr. Leisure: Yes.

By Mr. Leisure:

Q. Mr. Crapo, I think you told us yesterday that you are vice president and secretary of your company?

A. Yes, sir.

Q. And you are also one of the principal stockholders?

A. Well, I am a large stockholder, but in the low class.

Q. Now, you started, I think you said, with your company in 1907?

A. '07.

Q. Had you any experience in the cement business prior to that? Or let me put it this way:

What was your age when you started working for your company?

A. I was born in '65.

Q. Well, regardless of that, had you any experience in cement work before you went with the Huron Company?

A. I was president and treasurer of the Wyandotte Company.

Q. And at the present time are you in charge of any group of employees, or are you actively head of any particular department in your company?

A. No, sir.

11368 Q. In what city are the business and executive offices of your company?

A. In Detroit.

Q. Where is your office with respect to the sales—do you have an office in those buildings at the present time where you report regularly every day at the present time?

A. Well, I don't report regularly every day, but my

office is on the fourteenth floor, and the Huron offices are on the thirteenth floor, and the Michigan Alkali offices are on the sixteenth floor.

Q. And at the present time are you the head of any department or any group of employees in the company?

A. No, sir.

Q. Were any cement manufacturers trucking into Cleveland, Mr. Crapo, at the time you began to truck in that market?

A. I think not. When we came in most of our stuff went to dealers.

Q. Yes. What about Diamond?

A. At Middlebranch?

Q. Yes.

A. I don't know.

Q. Weren't they trucking in Cleveland when you came here, Mr. Crapo?

11369 A. From Diamond? From Middle Branch?

Q. Well, were they using trucks in Cleveland?

A. Oh, well, the local trucks have been in use ever since they started. Who owned them, who controlled them, I don't know, but you could hire them.

Q. Now, when you came to Cleveland, how was Medusa Cement being delivered into Cleveland?

A. Well, my recollection is by rail.

Q. And in the district of Cleveland, how was it being delivered around Cleveland?

A. I don't know whether they had a dealer that was around, because their general offices were here.

Q. And you don't know whether or not they were trucking at that time or not?

A. No, I don't know whether they were trucking or not.

Q. When did you start to truck in Cleveland?

A. Well, the date I can't remember, but when we—

Q. What is your best recollection as to the date when you started trucking in Cleveland?

A. Oh, five, six years,—that is, what I call trucking.

Q. Five or six years ago?

A. Five or six years ago, where we gave them this option and undertook to handle the trucks.

Q. Now, you started trucking in Cleveland five or six years ago. When did you start trucking in Toledo?

11370 A. I think that our trucking—a trucker, named Whitaker—

Q. Can you fix the time, Mr. Crapo, when you started trucking in Toledo?

A. I can by—it is the date of the building of the plant.

Q. Which was about when?

A. When was it? Because I—it is in the record here,—I mean it is in an exhibit,—it is the date of the plant.

Q. About 1929?

A. Yes.

Q. Yes?

A. If that's what the plant is—that's when the trucking started.

Q. Now, when did you start trucking in Buffalo?

A. At the date of that plant. That is, we gave them the option, when the trucks actually started, I think it was a little later; they didn't anybody want to buy by truck over there.

Q. Now, in connection with shipment by bulk which you discussed both on the direct examination and cross-examination conducted by Mr. Smith: Is there any difference in the cost of shipping cement in bulk as compared by shipping it in bags, Mr. Crapo?

A. Why, the handling charge is cheaper by bulk.

Q. So it is considerably cheaper to ship by bulk; is that the correct statement?

11371 A. It is much more costly installation, much less labor, but, of course, it all depends on the volume, then. You save on the labor but you pay on the interest, and wear and tear on your expensive installation.

Q. Then, on large volume, which would be cheaper, shipping in bulk or in bags?

A. Well, the larger the tonnage of the boat, the cheaper you get it at destination. Our boats—as we have gone around have grown bigger and bigger.

11372 Q. And in large volume, which is cheaper, shipping in bulk or in bags?

A. Well, you eliminate the man power of putting bags on and getting them off, and also a very heavy cement will only pile up so high before the pressure gets so it bursts the bags.

Q. Read the question.

Trial Examiner Norwood: Just answer, which is cheaper. Do not tell him why. Read the question.

(Question read.)

A. Bulk, bulk.

Q. The bulk shipment?
A. Yes.
Trial Examiner Norwood: Is cheaper?
The Witness: Cheaper.

By Mr. Leisure:

Q. Now, in determining the cheapest method of transportation, whether by truck or by rail, or by barge, do you consider the mileage, Mr. Crapo?
A. Not as a major item.
Q. I did not ask you whether it is major—
A. Why—
Q. Do you consider the distance?
A. Why, of course, we consider the distance.
Q. That is, the distance by one method might be
11373 much farther in distance than the other. For instance, the distance to Duluth by water might be much shorter than around the lakes by rail; is that correct?
A. It is shorter mileage, yes.
Q. Do you consider that when you are determining upon what method of transportation you will use?
A. We consider it.
Q. You gave Mr. Smith yesterday, and Mr. Wooden, I believe, the times when you acquired certain boats for the shipments.
Having once purchased the boats, Mr. Crapo, do you consider it good business policy to use them wherever possible?
A. It is economical, yes.
Q. That is, you are interested in spreading the overhead as to those boats, over as much tonnage and as many shipments as possible?
A. We—in the cement business, and in the boat business, we want to give the boats tonnage.
Q. You want to give the boats tonnage. How about it from the viewpoint of the manufacturer? Having once acquired the boats, are you interested in spreading the overhead over as many shipments and as much tonnage as possible?
A. Yes, sir.
Q. Now, you said, I think, with respect to your mills you load directly to the water—is that correct?
11374 A. Well, we—the stone foundation, you mean build a dock out—

Trial Examiner Norwood: No. Answer his question directly, and then if he wants a reason he will ask you for it.

The Witness: All right. What is the question?

Trial Examiner Norwood: Read the question.

(Question read.)

A. Yes, sir.

11375 Q. And a company such as yours, when it owns boats, do you consider the cost of operation and the investment involved when you consider the shipping by boat or by water?

A. Boats are a separate corporation, and you have a separate rate.

Trial Examiner Norwood: Now, answer his question.

The Witness: Do we consider it? No.

Trial Examiner Norwood: Read the last question.

(Last question read.)

A. I think we do. I don't know what it means, but I think we do.

By Mr. Leisure:

Q. Now, with respect to your Alpena mill,—is that the name of one of your mills, Alpena mill?

A. Well, it is the Huron mill at Alpena.

Q. The Huron mill at Alpena. And it is often referred to as the Alpena mills?

A. (Witness makes no response.)

Q. Yes.

What is the capacity of that mill?

A. Well, the biggest—

Q. About 4,000,000 barrels, I think you said.

A. Just short—we have actually put out—actually got just short of 4,000,000 barrels.

Q. As cement mills go, now, Mr. Crapo, is that

11376 an unusual mill?

A. Well, I should say it is in the second place.

Q. About what,—about third or fourth largest in the country?

A. Oh, no, no, no.

Q. What,—where does it come?

A. Well, there is some of these—you take some Universal mills that are much bigger, and I think Atlas, Hannibal, and a number of them.

Q. Yes.

And where would you rank, about fourth?

A. No, no, we are below that, of course—
Q. How far below?
A. I can't—
Q. About 4,000,000-barrel capacity?
A. Well, I can't answer that question.
Q. I think you said also that you sold that output of Wyandotte?
A. Yes, sir.
Q. What is the capacity of that mill?
A. About 1,200 barrels a day.
Q. So you sell the product of Wyandotte?
A. Yes.
Q. And the product of your own mill?
A. Yes.
11377 Q. Now, I think you said that after your mill was first built there came a time when you enlarged it, in order to accommodate the alkali company; is that correct?
A. We tried to consume what they can't use,—that is, the fines.
Q. And you enlarged the capacity of your mill for that purpose?
A. For that purpose.
Q. That is, they had small stone to dispose of?
A. They had small stone.
Q. Now, having enlarged your mill, Mr. Crapo, it was then necessary for you to find new markets for the product?
A. Yes, sir.
Q. Was it?
A. Yes, sir.
Q. And by using these barges on the lakes, and, in some cases, by erecting silos, you were able to compete at greater distances from your mill, were you?
A. Yes, sir.
Q. Now, Mr. Wooden suggested on his direct examination to you that the net price at the mill was the important thing to you.
Have you ever sold any cement at this so-called mill net price?
A. Oh, I don't understand the question.
11378 Q. Well, I think on direct examination you were discussing the subject with Mr. Wooden, and he suggested that the mill net was the important thing to you, and I think you said "Yes."

A. It is.

Q. Yes. Now, I am asking you, and if you do not understand the question you tell me—

A. Yes.

Q. —I am asking you if you ever sold any cement at this mill net price.

A. I—I understand your question to be whether we sold it at our base price. Why isn't the base price what is meant there?

Q. Now, you said mill net was important to you.

A. Well, sure, the base is important to us.

Q. And I would just like to know if you ever sold any cement at your mill net price?

A. I don't think we ever sell—can sell any cement except at the mill net price in the way you speak of it.

Q. That is, you—

A. It may be a profit, and may not be a profit, but it is—

Q. What does the buyer pay you,—does he pay you the mill net price?

A. What is—

Q. Or does he pay you the delivered price?

11379 A. He pays me the delivered price.

Trial Examiner Norwood: Supposing he buys it at the mill.

The Witness: Why, then, he pays the mill net price.

By Mr. Leisure:

Q. Well, now, Mr. Crapo, Mr. Wooden suggested that the mill net was the important thing to you. Is the sale of cement important to you also?

A. The volume is important on lowering the overhead.

Q. Yes.

Can you think of anything, Mr. Crapo, more important to a manufacturer of cement than the selling of his product?

A. Well, I think it is in the secondary position to the economies of manufacture.

Q. Yes. When you say "secondary position," what do you mean by that, sir?

A. I mean the economies of manufacture is first, and the selling is second.

11380 Q. And regardless of how economical you were in the manufacture of your product, if you didn't

sell it, would the economy of your manufacture be of the slightest benefit to you?

A. It all balances.

Q. In other words, you have got to sell it after you have manufactured it?

A. The salesmen can only get what the public will pay.

Q. Precisely.

A. And then when they don't get it, then you run down to 40% of production, which is bad.

Q. Well, if you can sell your cement at a reasonable price, the mill net will take care of itself, will it not, Mr. Crapo?

Trial Examiner Norwood: Answer him directly.

A. Yes.

By Mr. Leisure:

Q. Now, in regard to these bases, you told us the other day on your direct examination, conducted by Mr. Wooden, that you had a conversation, I believe, in Cleveland with Mr. Johns about the Buffington base, and at that time he suggested to you that Buffington should be the base for Cleveland. Do you recall that?

A. Yes, I recall that.

Q. Was that Mr. J. B. Johns of the Medusa Company?

11381 A. That was J. B. Johns.

Q. Was that the suggestion made to you?

A. Made to me.

Q. Yes. When was that, Mr. Crapo?

A. Well, that was shortly after the price rose from the 95 cents, the Cleveland base.

Q. And where did that conversation take place?

A. I don't know whether that was in Detroit or in Cleveland.

Q. Now, Pittsburgh is about 135 miles from Cleveland, isn't it, Mr. Crapo?

A. I think so.

Q. And Buffington is where? Near Chicago?

A. Just outside of Chicago.

Q. That would be around 400 miles?

A. Yes.

Q. Right?

A. I think so.

Q. So Mr. Johns suggested to you that Buffington, with

a freight rate double the rate from Pittsburgh, should become the Cleveland base?

A. That is what he suggested, yes.

Q. That would make the freight rate more than the base price, wouldn't it, Mr. Crapo?

A. I don't know. I was only interested in what
11382 the price was at Cleveland.

Q. Well, in that instance, what would become of Ironton, for instance?

A. I don't know.

Q. It would be able to undersell Buffington, wouldn't it?

A. I don't know. I don't know whether at that time the base at Ironton or the base at Pittsburgh—

Q. What would become of the base at Mitchell? It would be able to undersell Buffington, wouldn't it, in Cleveland?

A. If the combination at Buffington plus the freight to Cleveland was lower than they made it, maybe a higher base at Mitchell, or from Pittsburgh than a lesser freight, then the Buffington base would govern.

Q. Yes. But you haven't any doubt, have you, that the freight rate between Pittsburgh and Cleveland would be about half the freight rate between Chicago and Cleveland, where the distance is doubled; have you?

11383 A. I have not, no.

Q. Well, now, with Buffington as a base, as you say Mr. Johns suggested to you, what would become of the Limedale base? Wouldn't it undersell Buffington?

11384 A. I don't know.

Q. At Cleveland?

A. I don't know.

Q. What would become of the Pittsburgh base? Wouldn't it undersell the Buffington base in Cleveland?

A. I don't—I am perfectly willing to admit that the conversation might have been foolish.

Q. Do you mean—

A. Because it didn't figure. But my impression is that the Buffington base did govern here at that time.

Q. Do you mean that Mr. Johns made a foolish suggestion to you?

A. No; I was foolish even to consider—neither of us—

Q. Well, now, what would have become of the Buffalo

base if Buffington were the base sold in Cleveland? Wouldn't Buffalo be able to undersell Buffington in Cleveland?

A. At the date of this conversation, I don't know what bases there were, because at that time the Cleveland base was formed.

Q. Now, in this letter which you wrote to Mr. Affleck, Mr. Crapo, you say "the effect of the Wabash Company in taking such independent action in a territory so far distant from its producing mills is to inflict a blight on the net earnings of the neighboring cement mills."

Now, the action that you had reference to, when
11385 you were writing to Mr. Affleck—what was Mr. Affleck's position with one of the Respondents at that time, Mr. Crapo?

A. Why, he was president of the Universal Company.

Q. Yes.

Mr. Wooden: Universal-Atlas, you mean?

The Witness: Universal-Atlas.

By Mr. Leisure:

Q. Now, the action that you had reference to was that Wabash had reduced its price; is that correct?

A. Reduced the Bay City price.

Q. Yes. And the blight that you were speaking of, when you used the term "blight" was that it affected the earnings of other mills in that vicinity?

A. Reduced the earnings of the mills near to Bay City.

Q. Yes. And the particular mill that you were interested in or were thinking about when you wrote to Mr. Affleck was the Huron mill, was it not?

11386 A. Yes, the earnings of the Huron.

Q. Now, which is the smaller company in point of production, the Wabash or the Huron Company?

A. The Wabash.

Q. Is the smaller?

A. Yes.

Q. Now, you said the Huron Company's net loss in dollars from this Wabash act in the Bay City territory is greater than that of the Aetna, because in the Bay City territory—let me start again: "The Huron Company's net loss in dollars from this Wabash act in the Bay City territory is greater than that of the Aetna because of tonnage, although it would appear that we were not in any way an offender, simply an innocent bystander."

Now, you were writing Mr. Affleck about this reduction of price in this letter, weren't you, Mr. Crapo?

A. Yes, sir.

Q. And Huron stood to lose money if it met that reduced price; is that correct?

A. We did meet it. We were forced to meet it.

Q. And the Huron stood to lose money if it met it?

A. The base was in existence, and that is when we had to sell to hold our customers.

Q. I don't think you understood my question.

11387 A. We did lose money.

By Mr. Leisure:

Q. That is, you had to meet it if you wanted to sell any cement?

A. Yes.

Q. You had to meet the lower price if you wanted to sell any cement?

A. Yes.

Q. Then you said on the same page, in the following paragraph:

"The problem is what can Huron do to better its situation. The Cement Association or the—" well, without going any further, the sentence is:

"The problem is what can Huron do to better its situation."

You were referring to your situation then as the innocent bystander; is that right?

11388 A. Yes, sir; that is right.

Q. Now, then, further on the same page, you said:

"The innocent bystander generally runs to a policeman for protection, but the Huron has reluctance in taking such a course without careful thought."

Did you intend that to be any kind of a threat to Mr. Affleck, Mr. Crapo?

A. I think it might have that interpretation.

Q. Yes. And if that was your intention, did Mr. Affleck do anything whatever about it?

A. He didn't even answer the letter.

Q. As a matter of fact, he didn't even answer the letter, did he?

A. No.

Trial Examiner Norwood: Have you identified that letter? Is that an exhibit?

Mr. Wooden: Yes.

Mr. Leisure: The letter I am reading from is your letter, Mr. Crapo, to Mr. Affleck, dated July 29, 1936, Exhibit 418-A, which is in evidence.

Trial Examiner Norwood: Commission's Exhibit.

By Mr. Leisure:

Q. Then you went ahead further after that statement to say:

"Before what jurisdiction should the matter be 11389 presented?"

A. Yes.

Q. "The Federal Trade Commission or the court?"

The complaint to Mr. Affleck was that one of your competitors had lowered the price in what you called your backyard; is that true?

A. That is right.

Q. Now, what action, Mr. Crapo, did you think that the Federal Trade Commission might take because one of your competitors had lowered its price?

Trial Examiner Norwood: Well, now, just state what you thought.

A. I thought in the Federal Trade Commission law there was a clause covering unfair trade practices, and that if Huron could prove that Wabash was selling cement in Bay City at less than their cost, that we could recover three times our damage from Wabash.

11390 Q. Did you know of any sale that Wabash refused to take, any purchase that they turned down at that price?

A. My observation is that they didn't seek any business up there at all.

Q. You didn't answer my question. Can you tell me of a single sale that they did not accept?

A. I have not any, no.

Q. Now, when you say that they didn't seek any business, did they issue quotations or offer to sell at a reduced price?

A. They certainly—yes, they—

Q. And were those quotations issued publicly?

A. Yes.

Q. And were those prices met by the other companies in that section?

A. Met by Huron.

Q. And the other companies?

A. I judge so.

Q. Now, you said that the Cement Association or The Cement Institute had developed no disinterested high priest?

A. Yes.

Q. And you went ahead further and said, "In fact, the interest of The Cement Association seems to be limited to collecting the greatest amount of dues which the Association can spend to stimulate the use of cement."

11391 A. It is in the letter and I wrote it.

By Mr. Leisure:

Q. So that when you wrote to Mr. Affleck you didn't expect the Cement Institute or the Association to take any action when a competitor had reduced a price, did you?

A. Only moral suasion.

Q. And the Cement Institute nor the Cement Association, neither of them took any action in the situation?

A. None whatever.

Q. And they didn't even exert any moral suasion, as far as that transaction was concerned?

A. Not in that case.

Trial Examiner Norwood: Did they in any other case?

The Witness: Well, I would think over the history of the years that there has been a good deal of moral suasion.

By Mr. Leisure:

Q. Do you have any specific instances in mind, Mr. Crapo?

A. No.

Q. Now, you said you had a plant at Alpena?

A. Yes, sir.

Q. How long has that plant been there?

11392 A. 1907.

Q. And since it has been there has the base ever been changed?

A. Frequently.

Mr. Wooden: You mean the base price, Mr. Leisure?

Mr. Leisure: Yes.

By Mr. Leisure:

Q. Has the base price ever been changed?

A. Frequently.

Q. And in those changes, did you agree with anyone else to make the changes, any competitors?

A. I don't—what is that question again?

Trial Examiner Norwood: Read it.

By Mr. Leisure:

Q. Did you agree when you made those changes?

A. No.

Q. Did you agree prior to doing it with any of your competitors?

A. No.

Q. And has the Huron Company at all times been free to change its base price whenever it saw fit to do so?

A. Yes, sir.

Q. And did you make these changes to meet the local conditions, Mr. Crapo?

A. We made the changes to meet our local con-
11393 ditions, not Alpena local conditions, but our back yard conditions.

Q. I see.

In other words, as I understand you, you made the changes to meet the conditions that you found in the market; is that correct?

A. Yes, sir.

Q. Did you do the same with your other bases,—Wyandotte?

A. Yes.

Q. You had changes in prices there, also?

A. Yes, sir.

Q. And for the same reasons?

A. Same reasons.

Q. And at Toledo?

A. Yes, sir.

Q. At Buffalo?

A. Yes.

Q. And Milwaukee?

A. Yes.

Q. And at Duluth?

A. Yes.

Q. Bay City?

A. Yes.

Q. Muskegon?

A. Yes.

Q. Now, at these lake ports you have competi-
11394 tors, there, do you not, Mr. Crapo?

A. Yes.

Q. And at those points could the competitors change the base as far as it was concerned at any time,—if they chose to do so?

A. Yes, sir.

Q. Or change the market price there?

A. Yes.

Q. And if you found at any one of those ports that one of your competitors had changed the market price, and had lowered the price, would it be necessary for you to meet that price, if you wanted to sell cement at that port?

A. To sell it? Yes. But if we didn't meet it, if we didn't like the price—

Q. If you wanted to sell there, you would have to meet the new price?

A. Had to meet it.

Q. And has that happened—that your competitors have lowered prices at points where you have had to meet those prices?

A. Yes.

Q. Now, if your competitors at any of those points raised the prices, were you perfectly free to follow it, if you chose to do so, or forego the business?

A. Why—I think we were free to keep our price
11395 down, or follow them up.

Q. That is, you were in a position to either follow the price or not, as you chose?

A. If we thought they were wiser than we, we followed them; if we didn't, we didn't.

Q. Now, is it or is it not a fact that the prevailing market price in any of those situations would be determined by either yourself or the competitor that sets the lowest price?

A. Yes, sir.

11396 Q. That is, the others would be compelled to sell at that price if they sold any cement?

A. Yes, sir.

Q. And within your experience have the prices in these port bases fluctuated, Mr. Crapo?

A. Yes.

Mr. Leisure: I think that is all.

Redirect Examination by Mr. Wooden.

Q. Mr. Crapo, you said that you felt that there had been a good deal of moral suasion over a period
11397 of years. What did you mean by the expression "moral suasion"?

A. Well, of course, for many years the cement industry has gathered at its association—out of those discussions which came up, why, individuals changed their ideas.

Q. And policies?

A. And policies.

Q. When you say cement associations, do you mean the Portland Cement Association?

A. Yes.

Q. Or the Cement Institute, or both?

A. Why, I had in mind the Portland Cement Institution, because it is older and bigger.

Q. Institution?

A. I mean, the Association.

Q. Yes. Is the membership of that composed primarily of the manufacturers of cement?

A. Of cement, yes.

Q. Is it composed of substantially the same firms and corporations that comprise the membership of the Cement Institute?

A. I haven't checked the list, but substantially so, I think.

Q. Yes. Have you been present at any meetings of that Association where this so-called moral suasion was exercised?

11398 A. Well, there is a great group of people—

Mr. Zimmerman: You mean the Institute or the Association?

Mr. Wooden: No, the Association.

Trial Examiner Norwood: Just a moment, gentlemen—let us get the answer.

A. There is a great group of people, and they get into groups and talk.

By Mr. Wooden:

Q. Yes. Have you participated in some of those group discussions?

A. I think so.

Q. Did you observe, in the course of those group discussions, this moral suasion that you speak of?

A. Yes, sir.

Q. Well, now, can't you give us some specific instances?

A. No.

Q. Has there been moral suasion exerted and applied in settling disputes in the industry by parties who—or outside of these association gatherings, that you speak of?

A. I don't get that question.

Trial Examiner Norwood: Read it.

Mr. Wooden: I will reframe it if you do not get it. Read the question.

(Question read.)

11399 Mr. Wooden: Strike out "parties who—or," outside of these association gatherings, that you speak of.

A. That is, between cement men or out—I mean, is this just between cement men?

Q. Yes.

A. Talk?

Q. Yes.

A. Well, I think they always tried to persuade each other, wherever they met.

Q. That is, persuade each other to do what?

A. Well, to rub off the edge of their notions.

Q. What do you mean?

A. Should—well, I mean, we got certain notions about the length of practical truck haul.

11400 Q. You mean, to compose differences of opinion?

A. That's it.

Q. About—

A. Other people may say they ought to be smaller.

Q. Yes.

A. That's what I mean by moral suasion.

Q. Have you known instances in which some of the leaders of the industry, big men in the industry, have attempted to compose such differences by moral suasion?

A. Why, the mere fact that they are big men, they are more likely to suggest an easing of the individual's practice.

Q. Whom do you have in mind when you refer to "big men" like that?

A. Big in what particular, if I might ask?

Q. Well, that is for you to say.

A. I don't know.

Q. You used the expression.

A. One man is big as a chemist, one man is big as a salesman, and one man is big as a manufacturer.

Trial Examiner Norwood: Well, what did you mean when you used that expression?

The Witness: I meant those various groups on the question that was under dis—in conversation.

By Mr. Wooden:

Q. Well, what group do you mean, the groups at
11401 the Association meetings?

A. Yes.

Q. Well, now, who do you have in mind as big men who have attempted to compose differences or take the edge off of differences of opinion, and so forth?

A. Well, I will state our—or the Michigan Alkali Chemical director that ran to Europe—as a chemist he was looked up to. He is dead now. He has great weight—

Q. You mentioned—

A. —on chemical matters.

Q. You mention as an illustration the differences of opinion about trucking.

A. Yes.

Q. And the radius or territory in which it should extend.

A. Yes, sir.

Q. As an example.

A. Yes.

Q. Of the sort of differences that were attempted to be composed by moral suasion.

A. Yes, sir.

Q. Now, I am asking you what individuals among the big men that you speak of have attempted to exercise such moral suasion.

A. I have.

Q. Yes; who else?

11402 A. Well, I—I have—it may be a conceited remark—but I think I have given more study to trucks than any other.

Q. All right.

A. That they can learn wisdom from me.

Q. All right. You have been one of the big men who have tried to compose these differences about trucking; is that right?

A. About trucking; yes, sir.
Q. All right. Who are some of the others?
A. I—I don't recognize any others.
Q. Well, now, Mr. Crapo, you have a perfectly good recollection of your own attempts to compose these differences with certain other people?
A. Yes.
Q. Now, I want to know who the other people were that you state attempted to compose the differences by moral suasion.
A. I think I was successful in composing the differences with anybody—I can name the ones that I was not successful with, in composing the differences with.
Trial Examiner Norwood: Name them.
The Witness: Aetna.

By Mr. Wooden:

Q. All right. You named Aetna.
A. Yes.
Q. Were you unable to compose the differences with
11403 Aetna during the time Mr. Lingemann and Mr. Cree were in charge?
A. I don't think they were ever composed.
Q. Not even since they left?
A. Now, I wouldn't want to answer that question.
Q. Why not?
A. Because I haven't talked with Calvin.
Q. Well, are the differences—
Mr. Smith: Who is Mr. Calvin?
The Witness: Well, Calvin took Lingemann's and Mr. Cree's place.
Mr. Smith: Yes.

By Mr. Wooden:

Q. Have the differences between Huron and Aetna been as pronounced as they were during the time Mr. Lingemann and Mr. Cree were there?
A. They have not been as pronounced.
Q. Well, now, have you ever attempted to compose any differences of opinion with others in the industry, say, with Mr. Affleck?
A. I have talked over the matter—the trucking matter with Mr. Affleck, yes.
Q. And other matters as well on which there were differences of opinion?

A. Oh, any matter where there was a difference of opinion, yes.

11404 Q. Have you attempted to compose any differences of opinion with Mr. Stone?

A. No.

Q. How about Mr. Luck,—Charles Luck at Peerless?

A. I don't know him.

Q. You never discussed with him any competitive difficulties?

A. Never met him.

Q. Anyone else from the Peerless Company?

A. No.

Q. How about J. B. John?

A. I have frequently seen him.

11405 Q. With regard to taking the edge off these competitive difficulties?

A. Yes.

Q. How about Mr. Rader?

A. Well, occasionally.

Q. Of Lehigh?

A. Rader of Lehigh, yes.

Q. Have you ever attempted to apply moral suasion to the Dewey Company coming into Milwaukee?

A. No.

Q. Have you had any contact with Mr. Tyler of that company?

A. No.

Q. What did you find to be Mr. Affleck's position with reference to trucking that you discussed with him?

A. He don't like him.

Q. You mean, he does not like trucking at all?

A. That's my impression.

Q. Did you learn from him why he did not like it?

A. No.

Q. Do you know why he did not like it?

A. I suspect.

Q. What is your opinion as to why he did not like it?

A. The truck rates are formative and varying; the railroad rates are not.

Q. Well, that means, does it not, that the use of

11406 trucks interfered with the calculations of an identical delivered price, does it not?

A. I don't know.

Q. Well, what does it mean, if not that?

A. I said I don't know.

Q. Well, you said that the trucks introduced an uncertainty into the—

A. The delivered price.

Q. —into the calculation of the delivered price?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. All right. Did you ever attempt to compose any of these competitive differences with Mr. Pearson of the Lone Star?

A. No, never met him.

Q. Or anyone connected with the Lone Star?

A. The dead people—Bissell and Strutman—

Q. How?

A. I mean, the Lone Star people that I knew are both dead.

Q. Who are they?

A. Bissell and Strutman.

Q. And during their lifetime, did you make efforts with them to take the edge off of some of these competitive conditions?

11407 A. I sought them in order to gain wisdom myself.

Q. I beg your pardon?

A. I say, I sought them, seeking wisdom.

Q. Yes.

A. Strutman was quite a man in certain lines and so was Bissell.

Q. You had—your company had correspondence with the International Company with which they were connected concerning the matter of trucking, did it not?

A. I don't remember.

Q. Don't you recall correspondence with Mr. Neylan, with the Aetna Company, that came into the hands of the Huron Company?

A. Well, it may have come in, but I didn't see that correspondence. I don't know Neylan, and I wasn't interested in that.

Q. (Showing paper to witness) Now, referring you to Commission's Exhibit 422-B, C, etc.,—that is a letter from the International Cement Corporation addressed to Mr. Cree of Aetna?

A. Yes, sir.

11408 Q. —but produced from your files under subpoena—do you know how it came into the possession of your company?

A. No, I do not.
Q. Would that serve to refresh your recollection—
A. No, never saw it.
Q. —as to such correspondence, at all?
A. Well, it is evidently there, but it is a long letter—a fellow by the name of Fox—
Q. (Showing paper to witness) In the same connection, showing you Commission's Exhibit 422-A, isn't that a letter from Mr. Logan of the International sending that correspondence to you, Mr. Rooney?
A. I judge it is.
Q. (Showing paper to witness) Referring you to Commission's Exhibit 909, which is your letter of July 9, 1936, to Mr. Johnson, the president of the Aetna Company—
A. Yes.
Q. —is that an instance that you describe there where moral suasion was exercised?
A. It was not exercised, because the meeting never took place.
Q. Well, I am referring to this instance—
A. Oh.
Q. —spoken of before, where you say the big brothers in the cement industry interested themselves in the
11409 matter and accomplished a reconciliation which restored the base price.
A. Yes, that's one.
Q. Is that a case of the moral suasion you refer to?
A. Yes, sir.
Q. Can you say now who those big brothers were?
A. No, sir.
Q. What did you mean by the use of the term "big brothers"?
A. I wasn't in that conference at all.
Q. Well, whom did you have in mind when you said "big brothers"?
A. The—I know that they had smoothed off Cree's action; I don't know how.
Q. You mean at the time that you wrote that letter?
A. No, that was before.
Q. Well, I mean you knew at the time you wrote that letter about it?
A. That had been done.
Q. Yes.
A. And then Cree goes and does the same thing again.

Q. Well, I still do not have an answer to my question as to who you meant by the "big brothers."

A. I can't answer because I—I don't know except in connection with the principals involved.

Q. All right, consider the principals involved and answer the question as to whom you meant by the "big brothers"?

11410 A. I don't know. I don't know who came over there.

Q. Well, now, you are talking about—

A. Or who they were.

Q. Now, you are talking about the July, 1936, effort, are you not?

A. No, I—the other one, too. I mean, I don't know anything about that except the incident.

Q. You know the base price was restored, anyway, in that first instance?

A. Well, I don't know even whether it was a base price. If I can recollect now, I know the altercation ceased.

Q. Did you write in that letter that they affected a reconciliation which restored the base price?

A. Well, if that is what I wrote, that was a base price.

Q. Well, you used an expression in your testimony yesterday, I believe on direct, and I believe Mr. Leisure quoted it again this morning, in which you said in regard to this Bay City base established by Wabash—when was this, 1936? Is that the second time the Wabash went in there?

A. I would have thought it was a little before.

Q. Or '35?

A. Well, '36 is very close.

Q. Well, at any rate, you used the expression that you were not an offender in that case but an innocent bystander; is that right?

11411 A. That is my statement.

Q. What did you mean by saying you were not an offender? An offender against what?

A. We hadn't taken Wabash's contract away from them.

Q. As who had?

A. As Aetna had.

Q. What do you know about the details of that?

A. I only know the general talk.

Q. You don't know the details?

A. No, I—

Q. Do you know what contract was involved, even?
A. Well, over the southwestern part of the State, Grand Rapids, and somewhere around there.

11412 Q. Mr Crapo, Mr. Leisure was asking you about the proposal of Mr. John to have the Cleveland price based on Buffington.
A. (Witness nods affirmatively.)
Q. And asked you if that wouldn't permit Ironton or Mitchell or other base points to undersell Buffington in the Cleveland market. Wouldn't that depend upon whether the other base points raised their prices correspondingly?
A. My recollection is that—.
Q. Can you answer that and then—
A. I don't know whether there was any base point at Ironton.

11413 Q. At any points what?
A. At Ironton at that time.
Q. But wherever the other base points might be, wouldn't it depend upon whether their raised their prices correspondingly?
A. In order to make—
Q. As to which one made the Cleveland price?
A. Governed.
Q. Yes, sir.
A. Yes.
Q. Mr. John's mill, was that located near Cleveland?
A. Bay Ridge, between here and Toledo.
Q. If Cleveland had been based on Buffington, that would have been a pretty nice arrangement for Mr. John, wouldn't it?
A. No, because, as I remember the situation at the time, the Cleveland price was fixed—it was only a question as to whether it would be called a Cleveland price or let it fall on the Buffington price. I wanted to have it the Cleveland, called Cleveland, and he wanted it to automatically fall back on Buffington. That is my recollection.
Q. Well, that would have made the Cleveland price the sum of the Buffington base plus freight to Cleveland, wouldn't it?
A. Yes; and that was the—

11414 Q. Well, with a mill between Cleveland and Toledo, wouldn't that have given that mill the advantage of the difference in the freight rate from Buffing-

ton to Cleveland compared with the freight rate from the mill to Cleveland?

A. My recollection is that there was no difference in what cement would be sold for in Cleveland, wherever it came from. It was only what you were going to call it.

Q. Yes. But Mr. John's mill, was that a base mill?

A. No.

Q. Wouldn't it have had the benefit of the difference in freight between Buffington—

A. There was no benefit.

Q. —to Cleveland and his mill to Cleveland?

You don't mean to say there was no difference in the freight from his mill to Cleveland and from Buffington to Cleveland, do you?

A. My recollection is that the price at Cleveland was fixed—

Q. I will be glad to have you state anything you like after you answer my questions, Mr. Crapo.

11415 A. Yes. Well, what was the question?

(Question read.)

A. No, his was cheaper, I think.

By Mr. Wooden:

Q. Well, then, wouldn't that have been an advantage to him in his mill net realization by the amount of the difference?

A. I don't think so.

Q. Why not?

A. Because the price in Cleveland was the same whether you called it the Cleveland base or whether you called it the Buffington base.

Q. Well, do you mean to say that the Cleveland base was an arbitrary base?

A. Surely.

Q. In other words, not the—

A. Not an arbitrary; it is the Cleveland base now.

Q. But then what was it then, an arbitrary?

A. No, it was the creation—well, I mean, this fight, and then this Cleveland base rose out of that fight.

Q. You refer to 1931, when you speak of a fight?

A. Well, it was quite a difference of opinion, and Lehigh, as I remember it, made the Cleveland base.

Q. Well, the 95-cent figure?

A. Yes.

Q. Is that right?

11416 A. Yes, the 95-cent figure.

Q. Then that was the 95-cent base price at Cleveland which was raised substantially later on?

A. It raised some, but the first time, in my recollection, that there was a base in Cleveland was when the Lehigh put it in.

Q. When they first established it?

A. They first established it, and called it a Cleveland base and made it ultimately 95 cents.

Q. Was that 95-cent base price in Cleveland raised to $1.20 in 1932?

A. I wouldn't be surprised.

Q. Well, can you be a little more definite about it?

A. No, I could get it on the records, but I—

Q. Will you provide that information—

A. Yes, surely.

Q. —giving the date?

A. Yes, sir.

Q. When it was raised?

A. Yes, sir.

Q. And the amount to which raised?

A. Yes, sir.

Q. And the present price?

A. Yes, sir.

11417 Q. Has the base price at Cleveland gone up to $1.50 since 1932?

A. It may have.

Q. Well, will you provide that information?

A. Yes.

Q. Now, Mr. Leisure asked you if you were not free to put the price down wherever you wanted to. You also said that sometimes you would withdraw from a market because the price was unprofitable, and in that general connection you said that it results in 40 per cent production. Do you remember that?

A. Well, I think I made those statements, but did I make them together?

Q. Well, I don't think you did altogether.

A. No.

Q. But you said the 40 per cent production basis was bad; do you remember that?

A. Yes, sir.

Q. You have also testified, and your letter to Mr.

Affleck shows that the price in Milwaukee, in your opinion, was too high.

A. No.

Q. You did not?

A. What I hoped to say in that letter was that not that the price was too high, but I didn't like the fighting
11418 over the Milwaukee tonnage with more people.

Q. Well, didn't you say something about the price umbrella being so high as to let Dewey come in there with a 53-cent freight rate?

A. Well, that was not the straw that had broken the camel's back.

Q. Didn't you testify that you thought that the price in Milwaukee was too high?

11419 A. No, because I would put it down if it was too high.

Q. I asked you that the other day as to why you didn't put it down.

A. Because I was satisfied with it.

Q. Well, in other words, you are satisfied with it, and I guess the record will have to show whether you said you thought it was too high.

A. Well—

Q. I am just leading up to ask you if you were free to put it down, why hadn't you put it down when you were running on 40% production, or 50% production, and you thought the price was too high.

A. I don't think it would increase the sales.

Q. You mean that your competitors would meet it?

A. Oh, I think undoubtedly they would meet it.

Q. But, at any rate, wouldn't you then be sharing with the consuming public some of the advantages which you say it is your obligation to share with them?

A. We have always shared with them.

Q. Well, isn't Milwaukee a case where you haven't shared, in view of your statement that the price was too high? I am still holding you to that, and the record will have to show as between us.

A. We have been in the red; we have shared everything we got until the volume comes up.

11420 Q. Did you ever consider whether volume would come up unless the price were lowered?

Q. You testified that your boats were owned by a separate corporation?

A. Yes, sir.

Q. Does Huron pay the cost or pay a definite rate to that boat corporation for transportation?

A. It pays a definite rate.

Q. Does that boat corporation carry any commodities other than your cement?

A. No.

11421 Q. Do you deliver any cement in bulk by boat direct to the customers? That is, as distinguished from direct to your own silos?

A. In a few cases.

Q. What sort of customers are they?

A. Well, at the present time we got the Mitchell tied up at Green Bay. He is delivering to customers.

Q. Delivering what?

A. The Mitchell is delivering cement to customers at Green Bay.

Q. What kind of customers are they? Dealers?

A. Well, I don't know. The customers in the town.

Q. Well, I am trying to find out whether they are customers or whether they are large purchasers like the Government or some other public buyer.

A. We just peddle it out in small lots.

Q. I see.

11422 Q. I see. To anyone who wants to buy or to dealers?

A. Well, now, I am not able to answer that question. The general trade.

Q. Mr. Leisure was asking you about your mill net, and then in response to him you said it was the important thing; is that correct?

A. Yes, sir.

Q. It is the only thing out of which you can pay expenses or show a profit, isn't it?

A. Yes, sir.

Q. Isn't the only thing that the Huron Cement Company gets for its cement?

A. I don't quite—the Huron Company gets all of its income from cement sales.

Q. And from its mill net on cement sales?

A. Yes, sir.

Q. You told Mr. Leisure that the buyer paid the delivered price; that is correct, isn't it?

A. Not always.

Q. In what cases does he and in what cases doesn't he?

A. Whenever the buyer has better transportation than we have, we will sell it—as a general statement—we will sell at the mill or lake port.

Q. Well, in what cases, if any, do buyers have better transportation than you, or cheaper transportation?

11423 A. Well, for a long time the lighthouse tenders have bought their cement at Alpena. We don't know what lighthouse it is going on. The Government buys a great deal of stuff. I think this Fort Peck, the title I don't know—just how that goes over the Government so that they can get the land-grant rate, I don't know.

Q. Yes.

A. And railroads get it.

Q. And you shipped some cement by rail from your mill?

A. If a customer wants it.

Q. Dealers buy it that way?

A. Some.

Q. When you sell a dealer at a delivered price by rail delivery, does the dealer pay you the freight or does he pay the railroad the freight?

A. He generally pays the railroad the freight.

Q. Do you show on your invoice the delivered price and then figure out the freight for him to deduct?

A. Well, he generally sends in the paid freight bill.

Q. But he then deducts that from the invoice, does he, the amount of it?

A. And the check is the balance.

Q. Is the net to the mill?

A. Is the net, yes.

Q. When you sell at your mill, you get your full

11424 mill base price; is that right? Is that right, Mr. Crapo?

A. That is our purpose.

Q. Well, don't you—

A. Well, I know, but—

Q. —accomplish it?

A. Who loads it on this Government boat?

Q. Well, I was not speaking of Government boats particularly.

A. Well, I know, but that's the question.

Q. No; when you sell at the mill.

A. F.o.b. something.

Q. Yes, f.o.b. mill.

A. We never let anybody into our mill to go and get the cement out. We got to deliver either on a railroad car or a boat.

Q. Well, isn't f.o.b. mill, doesn't that include delivery on a railroad car at the mill?

A. I wouldn't think so if you were a railroad man.

Q. I thought—doesn't f.o.b. cars at mill mean that?

A. Oh—

Q. Loaded at?

A. Oh, at mill, loaded f.o.b. cars at mill.

Q. Yes, doesn't that mean free on board cars?

A. Yes, free on board cars.

Q. Loaded on cars?

A. Yes, but now, supposing it costs more to load
11425 it free on board boat.

Q. Well—

A. I think we would take that into consideration.

Q. As I understand it, when you sell on the Alpena base, you get your full base price on such sales?

A. Not if it is a cross-shipment.

Q. What do you mean by cross-shipment,—into some other base territory?

A. Into some other base territory.

Q. Then you do not sell on the Alpena base when you do that, do you?

A. No.

Q. That was just what I was leading to. But when you go into territory where another base price governs—

A. Yes.

Q. —you meet the delivered price there?

A. Yes.

Q. And the result is that you shrink your mill base at Alpena—

A. Yes.

Q. —by the amount that you have to—the difference in the freight there?

A. Yes.

Q. Is that right?

A. Yes, sir.

11426 Q. When other mills come up into Alpena territory, do they do that?

A. They must, if they meet our price.

Q. Well, do they, as a matter of fact, sell in Alpena territory?

11427 A. I don't know exactly what you mean by Alpena territory.

By Mr. Wooden:

Q. There has been a territory that Alpena has governed, as to delivered prices.

A. Well, that—you have the map showing it from day to day.

Q. Yes.

A. Well, when it goes into—at the date on which those maps—

Q. Yes.

A. They have to meet our price, and they get less.

Q. At the mill?

A. At their mill.

Q. At their mill?

A. Yes.

Q. All right. That is just what happened in the case of Dewey going in Milwaukee, was it not?

11428 A. I think so.

Q. Now, let me clear this up. In shipping to your silos at various lake ports, are each of those silos located at a basing point?

A. I am—I would have to look at the record to see whether there is a basing point on at Oswego at the moment; the rest of them are.

Q. The rest of them are?

A. Yes.

Q. You are not sure about Oswego?

A. About Oswego.

Q. Have you put in the base prices of those ports yourself?

A. The name was coined by Lehigh.

Q. What name?

A. Of Cleveland base, Milwaukee base, some time ago. Of late we—we put the bases in.

Q. Of late, how late?

A. Well, I should say not long after—it is all hooked back onto the date of that 95 cent Cleveland base. Now I have forgotten it.

11429 Q. Can you tell me this, Mr. Crapo: Whether in any case at your silo points your base price there is

the equivalent of some other base price plus freight to that point?

A. I would have to check that; that may be a coincidence.

Q. Well, will you check it and let me know?

A. Yes.

Q. Along with these other things.

Now, as to Oswego, where you say you are not sure whether you have a base price there or not, is your price at Oswego the equivalent of some other basing point plus freight to Oswego?

A. I don't know what it is now, but shortly back it was Buffalo plus the freight rate.

Q. To Oswego?

A. To Oswego.

Q. Rail freight to Oswego?

A. Rail freight.

Q. And your price was at that time Buffalo base plus rail freight to Oswego; is that right?

A. That was the time when there wasn't a base at Oswego.

Q. All right.

A. There may be one since.

Q. Do I understand that it has been your policy and practice to always figure your truck delivered price at the same or as the same as the rail delivered price?

11430 A. Yes.

Q. That has been followed right down to the present time?

A. To the present time.

Q. The buyer who obtains truck delivery, then, pays you the same as though it had been delivered by rail?

A. Yes, sir.

Q. What economy, then, of truck delivery, does the buyer obtain?

A. He gets the cement on the job.

Q. He gets that, is that the only—

A. Instead of—

Q. —economy that he gets from it? He doesn't get the direct economy of the difference in the rail and the truck rate?

A. No.

11431 Q. Now, coming back, for a moment, to Oswego, have you had in effect there a five-cent per barrel

charge for delivery on trucking over the rail delivered price?

A. I don't think so.

Q. Well, haven't you had a five-cent—

A. I would have to check that over.

Q. —addition at some time or other?

A. I question it, but I can check—

Q. Will you check that over?

A. Yes, I can check that.

11432 Q. If it should turn out that you have imposed a 5 cent extra charge for trucking at Oswego, could you state on what basis or for what reason that was imposed?

A. Well, the only reason—I don't think we have done it—the only reason that I could think of was it would cost us more to load on a truck than on a car.

Q. But it—

A. But our mills are all constructed so that that is not true; we don't care which way they go.

Q. You say your mills are so—

A. I mean, yes, our lake port mills, I will put it that way, our lake port distributing plants.

Q. Are so constructed—

A. That we handle it just as cheap by truck as we can to the cars.

Q. How is that; as regards your mill?

A. Well, the same thing is true at the mill, only the—it is only a small truck delivery.

Q. Yes.

A. Because the chief goes by boat.

Q. But I mean, so far as—

A Yes, as far as it goes.

Q. —convenience or cost?

A. Of the convenience or cost to us, the loading—the truck loading dock is there.

11433 Q. What additional plant expense did it entail to put that dock there for truck delivery?

A. Well, not considerable, if you start at the beginning.

Q. Yes.

A. It all depends on how badly you get tangled up by old construction.

Q. By old construction?

A. Well, I mean before trucks were thought of.

Q. I believe you made some reference a day or two ago

to wishing you could go into Syracuse by truck, but that you had not done so—is that right?

A. Well, my recollection was that when 40 miles was considered to be the economic limits it just struck north of Syracuse. That's always where the trouble begins.

Q. Well, did the economic limit of truck distribution later exceed 40 miles?

A. Every time you get a good city road or something, it goes "blooey", the radius of the truck largely depends upon the improved highways.

Q. Well, did the improvement of highways result in extending the economical trucking radius from Oswego as far as Syracuse?

A. No, sir.

11435 A. I haven't personally been over those roads to make a judgment.

By Mr. Wooden:

Q. Well, do you not sometimes have to form a judgment upon what comes to you through your organization,—to you as vice-president?

A. Not in my conceived idea of my standards in regard to economical truck movement.

Q. Well, have you trucked into Syracuse?

A. I don't think we have.

Q. Can you say why not?

A. Because it exceeds 40 miles.

Q. And you are still hanging to the 40-mile limit on trucking?

A. I would want to check that again—we have up to—I haven't heard anything about any change, but I think it is a little shaky.

Q. You have trucked farther than 40 miles, in some cases?

A. Oh, we have trucked farther than 40 miles.

Q. In the past—of course, in the past?

A. You mean at Oswego?

11436 Q. Yes.

A. Oh, I think we have—I think that was the limitation, down to 40 miles, that came—I think it kind of went wild up there.

Q. How far is it from Oswego to Syracuse?

A. Oh, I don't know—it is less than fifty, isn't it—I don't know.

Q. I don't know.

Q. Referring to this 95-cent Cleveland base price, which you say was put in by Lehigh, was that what you referred to a day or two ago as being in the class of a vindictive or retaliatory base?

A. That was my opinion of it.

Q. What is the ground for your opinion?

A. I think that we can lay a sack of cement down in Cleveland cheaper than Lehigh, and 95 cents, we practically withdrew from the market, then Lehigh took it off, and they didn't like it.

Q. How do you know they didn't like it?

A. Because they got restive and ultimately put the base up.

Q. Did they talk to you about putting it up?

A. Didn't talk to me.

Q. Who did they talk to?

A. I—I am not sure.

Q. Was it—

11437 A. It was intimated to me that if I went to Allentown they would talk to me, but I didn't go to Allentown, and they didn't talk to me.

Q. You say they did not talk to you?

A. No.

Q. Did they talk to somebody in your company?

A. That I—I don't know. I didn't—they didn't talk to me up in the company; they may have come up and talked to somebody else, but I have no knowledge of that.

Q. Well, didn't you get a report from someone in your organization to the effect that they had been talking about raising the Cleveland base?

A. The only definite thing I got is the Cleveland base went up.

Q. Were you aware that Lehigh had sent some representatives to Detroit to—

A. I don't know.

Q. —to see—

A. I don't know.

Q. Let me finish, please. —to see representatives of Huron Company?

A. I—don't know.

Q. Well, I will ask you again whether there did not come to you, through your organization, the Huron Com-

pany, through Mr. Rooney or someone connected
11438 with your company, a report to the effect that Lehigh had representatives in Detroit to see about raising the Cleveland base?

A. No report came to me. There wasn't any reason. I may have heard gossip.

11439 Trial Examiner Norwood: Did you hear anything about this from anybody?

The Witness: I have no report from anybody. I have nothing that came under my jurisdiction from anybody.

By Mr. Wooden:

Q. Do you know whether Mr. Rooney, or anyone else connected with your company, talked with Lehigh representatives about that?

A. I don't think he did. I don't think Rooney was on the job then, if I remember right—

Mr. Paulson: Jones.

The Witness: Jones—

By Mr. Wooden:

Q. How about anyone else connected with your
11440 company,—Mr. Rooney's predecessor, who was he, Jones?

A. Jones.

Q. How about him?

A. Well, I don't know.

Q. Did you get anything from Mr. Jones about it?

A. No, no, no report, no talk with Mr. Jones.

Q. Well, at any rate, you knew that the Cleveland base was raised?

A. That's what I know.

Q. And you followed along?

A. We followed along, yes.

11441 Q. Now, Mr. Smith was asking you something yesterday afternoon about the price at Muskegon, and you, I believe, said that was when you had the flat price in effect.

A. (Witness nods head affirmatively.)

Q. But the price was too low and that your trucking reached too far?

A. (Witness nods head affirmatively.)

Q. You have had complaints from many competitors that the price at Muskegon was too low?

A. No.

Q. Or that your trucking reached too far?

A. No.

Q. Didn't you get the same net on your trucking out of Muskegon that you did from your other silo plants?

A. That is, the net to the mill?

Q. Yes.

A. No.

Q. Did you get the same net to the silo?

A. Not out—I don't know just what net is, but we had less after paying our expenses. The cost of trucking was so much higher that we got less for our cement after we fulfilled our obligations at Muskegon because it was a more expensive trucking proposition.

Q. Does Huron have its own trucks for delivery out of these silo plants?

11442 A. The State Law came in and the—you have got to use contract carriers, that is, or you use your own trucks. The fellow has got to—and we use contract carriers just as far—

Trial Examiner Norwood: Wait a minute. Read that question. I don't think you are answering that directly.

Mr. Wooden: He is getting around to answering it now.

The Witness: Yes.

(Question read.)

Trial Examiner Norwood: Now, answer that question directly.

A. One or two, yes.

Q. Where?

A. Or a few. They float wherever they are needed.

Q. What percentage of your truck deliveries are made in your own trucks?

A. I prefer to get that off of our books. We have got it.

Q. Can't you give us an idea whether it is very small or very substantial?

A. It is the minor part.

11443 Trial Examiner Norwood: That is, the percentage of the cement—

The Witness: Of the stuff that goes by trucks, on our trucks.

Trial Examiner Norwood: Is the smaller percentage?

The Witness: Very much so.

Trial Examiner Norwood: That goes on your trucks; is that right?

The Witness: Goes by contract carriers.

By Mr. Wooden:

Q. You mean compared as to what goes by contract carriers?

A. Yes.

Q. The percentage that you handle in your own trucks?

A. Yes.

Q. Is quite small?

A. I can give you the exact figures.

Q. Well, is it below 25 percent?

A. Yes, below 25 percent, I should guess.

Q. Is it below 10?

A. Well, now, I wouldn't—I can't answer that.

Q. Well, will you give us the figures on it?

A. Sure.

11444 Q. Have you found in your experience, Mr. Crapo, that some dealers like truck delivery?

A. That is a little general. The dealer as a rule likes to use his trucks to deliver to the job.

Q. Yes.

A. And it comes a little slowly, when he wants cement at all and he gives us orders,—I mean to say, to deliver to his job at the same price. Then he likes it.

Q. Did you ever find in your experience that some dealers like truck delivery, sending their own trucks to your mill or silos for cement?

A. Yes, they like that very much, but the Michigan law, for instance, doesn't allow them, because they are not contract carriers.

Q. Well, how about sending a contract carrier that they hire?

11445 A. Yes, then they get no—they can't work the truck in the dead time to go down and get it. They have got to pay the contract carrier price, pass it on by the Michigan Utilities Commission.

Q. Before that occurred, was that handled in that way?

A. Yes, sir.

Q. In the way that I suggest?

A. Yes, sir.

Q. Did you find as to dealers that liked to send their own trucks—

A. The dealers that had trucks, and handled large quantities, and the trucks were idle, they liked to use them in that trade.

Q. In that way?

A. In that way.

Q. Did you make quotations to the procurement division of the treasury last April on an f.o.b. mill or f.o.b. silo basis?

A. Direct to the procurement division?

Q. Yes.

A. We did, yes.

Q. On a silo basis?

A. Yes.

Q. Or mill basis or what?

A. Well, I suppose f.o.b. car.

11446 Q. And the silo?

A. Yes.

Q. Do I understand you to say that if a dealer wanted to buy f.o.b. cars at your mill, that you would sell him that way and let him take it away any way he likes to, any place he likes?

A. If he was—if the transaction was sensible, yes.

Q. Well, would it be sensible if you got your regular mill base net out of it?

A. We cannot get our stuff all confused and mixed up. He has got to show an advantage to him. We will respect that. But if he is just claiming a right to come in, as you said, go into the mill and take the stuff out, we won't let him in.

Q. No.

A. We wouldn't sell him at all.

Q. I am merely asking, would you permit a dealer to buy a carload of cement?

A. At the present time?

Q. At the mill without knowing where he wanted to take it or what he wanted to do with it?

A. No. That is, it depends on the dealer.

Q. Yes.

A. When I—can I explain this a little?

Trial Examiner Norwood: Yes.

11447 A. When I want to buy some cement for my farm from the Saginaw plant up there, and send my truck up, the first thing they ask me: "Where is this cement going?" and I say: "At the farm." And then

you say: "What is the price?" and they charge me the same for getting it just exactly as if they took it down themselves.

Q. You mean they charge you the delivered price?

A. Yes.

Q. Well, what I am seeking to ascertain is whether you do the same thing at your mill that you just described.

A. That is the description of our mill, and I pay it.

Q. Why do you have to know where it is going before you make the sale?

A. The only price we have got out to the public.

Q. You mean the delivered price at given destinations?

A. Yes.

Q. You have a price at Alpena, though?

A. Well, this happens to come from Saginaw.

Q. All right, take Saginaw, then.

A. Well, we will take Saginaw.

11448 Q. Yes.

A. I tell them a price. I have got no justification going in for those few barrels, whatever they are, to the Huron Company and to mix up their open public price for just my trucking, going up and getting 20 barrels.

Q. Suppose a dealer wants a carload, though, and you don't know where it is going, will you sell it to him at the mill?

A. We want to know where it is going.

Q. Why is that?

A. That is, the dealers like it better, otherwise there would be no confines for the dealers, if you brought it in there; they would go all over creation.

Q. Don't you want to know where it is going in order that you may quote a delivered price that is in harmony with the delivered prices of other mills at the same point?

A. No, I don't think so. We want to quote a delivered price that the great bulk of our people—so as not—as to keep the cement going where it belongs and not having them go to Detroit and bidding and to Saginaw, and taking it away from the dealers, and vice versa.

Q. Whatever the reasons, the fact is that you don't sell to a dealer at the mill without knowing the destination; is that right?

A. Well, or with a good reason as to where he can—

Q. Yes.

11449 A. —do any good job by—

Q. Can you tell us, Mr. Crapo, about what percent of your shipments of cement go by rail and what percentage by water?

A. Yes, if I have the records for rail and water.

Q. Yes.

A. Oh, yes. We gave them. Isn't that in the record?

Q. I thought that was trucking.

Mr. Smith: Trucking.

The Witness: Oh, yes, trucks, yes.

Mr. Smith: Practically everything, I assume, except local deliveries go from Alpena by water, if that is what you mean.

The Witness: We will send you a letter.

By Mr. Wooden:

Q. Well, I just want to get your general information. Is it a very heavy percentage that moves by water as against by rail?

A. Out of where?

Q. Well, out of your mill, first, and then we will take the silo, the same thing.

A. I mean, that is the point.

Q. Yes.

A. It is a heavy percentage, very heavy out of the mill.

Q. Is it as much as 90 percent?

A. Well, I should think so.

11450 Q. Yes. Ninety percent out of your mill by water?

A. Yes.

Mr. Smith: About 95 percent moves out.

Mr. Wooden: All right.

By Mr. Wooden:

Q. As to your silos, I suppose it would vary at different silos how much moves out by rail?

A. Every point varies.

Q. And by water?

A. But in some cases in some years in Detroit there will be 90 percent go out by truck out through the Detroit packing plant.

Q. Well, I am off the trucking matter now. But rail and water—

A. Well, there isn't—water is very scarce. It may go

out on a barge for the Belle Isle bridge, but that only happens about once in 20 years.

Q. In other words, when it comes to delivery out of your silos, is the movement by water almost—

A. Negligible.

Q. Almost negligible?

A. Yes.

Q. And then it is between rail and truck?

A. Truck.

Q. All right.

11451 Now, can you estimate about what the percentage of your total sales and shipments of cement are made within the State of Michigan and how much is made without the State?

A. Well, we have those records.

11452 Q. Well—

A. We will give them to you.

Q. Well, what is your general statement on that? I will be glad to have the exact records, but—

A. I can't tell it.

Trial Examiner Norwood: Or give us an estimate.

The Witness: It is all in the records, and I am perfectly willing to.

By Mr. Wooden:

Q. Will you provide that?

A. Yes, I will provide that letter.

Q. Can you say, Mr. Crapo, how far you can truck cement economically in competition with rail transportation?

A. You tell me on what road, in what district, and what the grades are, and what the interference is, and I can answer that question.

Trial Examiner Norwood: Well, under the most favorable conditions you know of in your territory.

By Mr. Wooden:

Q. Take some of your silo points, for example.

11453 Give one instance?

Trial Examiner Norwood: Yes.

The Witness: Why, a truck takes from the western part of the State to Buffalo and comes back light. There is a case at Detroit, for instance, who takes it back. It is pretty cheap delivery because it is loaded; it saves an empty return haul.

Trial Examiner Norwood.: And came back for less than freight?

The Witness: Almost anything they get on a return empty haul, in that particular case, is economically sound for them.

By Mr. Wooden:

Q. Is that an exceptional illustration you give or can you—

A. That is an extreme illustration.

Q. Extreme. But there are many illustrations that might be given that wouldn't involve quite so large a distance?

A. No.

Q. Well, suppose you consider it from the standpoint of straight business with no back haul, then how far can you truck economically in competition with rail competition?

A. I spent a considerable analysis a few years ago, and came to this conclusion, which I am not sure is right, that if you use a truck it costs 6 cents a barrel to load
11454 it and it costs half a cent a mile for the movement, with a return empty load. And you figure that out. That is in Michigan where the things were favorable and with no grades, and you figure that cost out on the distance, and when it comes to the rail, that is the end of the truck. Beyond that it is foolish.

Q. Are there areas that you have in mind or could name where the trucking of cement could be extended with economy to the purchaser?

A. I am not sure of any now. When I become sure, we will send our trucks out.

Mr. Wooden: That is all.

Recross Examination by Mr. Smith.

Q. Mr. Crapo, just a few more questions.

The Huron Transportation Company is a wholly-owned subsidiary of the Huron Company?

A. Wholly-owned subsidiary of the Huron.

11455 Q. On the Fort Peck contract, I understand you delivered title to the Government when it left the boat at Duluth?

A. That is my understanding but I couldn't give the details of how that title was transferred.

Q. But it was in effect?

A. Yes.

Q. Delivered direct from the boat to the customer?

A. Yes.

Q. You were asked a question, if the base price—whether the base price in any of your auxiliary plants was the same as that of another base plus the freight to that auxiliary plant, and you said it might be, as I remember, it would be a coincidence.

A. Yes.

Q. Do I understand from that, that if there was that identity, it was a coincidence, and that your base price at your auxiliary plant was not built consciously on some other base price?

A. I think the real answer to that is that if we were satisfied with the base price we wouldn't have to say anything at all, but we like to have an auxiliary plant base price ourselves.

Q. In other words, you took all factors into consideration?

A. Yes.

Q. And then exercised your judgment?

11456 A. The judgment, because we liked to have it published. That we consider is our job.

Q. Yes.

Now, one other question: Query was made as to the possibility that at some time you charged a five-cent rate for trucking delivery, and then you were asked what justification there was for that. Isn't this a fact, that the trucking delivery puts it direct on the job and saves the dealer the haul from the railroad car to the job?

A. Yes, sir.

Q. Wouldn't that be some justification for your exacting, if you desired an additional charge?

A. We would never exact—

Q. No, I didn't ask you that. If any cement manufacturer did exact an additional charge for the truck delivery, could he not justify it by the fact that he had made possible that saving to the dealer?

A. I think he could.

Redirect Examination by Mr. Wooden.

11457 Q. Did you impose any additional charge for truck delivery at Oswego or elsewhere after competitors complained about your truck delivery there?

A. I think not, but we can send those in.

Mr. Wooden: All right.

Mr. Smith: That is all.

11458 DAVID H. MAC FARLAND, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am vice president of the Medusa Portland Cement Company, handling special products outside of our
11459 cement. I come in contact in a general way with the salesmen representing the company, who also sell Portland Cement. I am acquainted with some of them, but they are not under my direct supervision. I believe I was elected to that position at the December 1930 meeting of the Board of Directors. Prior to that I was assistant to the president of the Medusa Company from April 1, 1930, until I was elected vice president, and prior to April 1930 I was assistant to the president of the Atlas Portland Cement Company.

Q. Is that the company that was just about that time started by and became affiliated with the Universal Company, which was a subsidiary of the U. S. Steel Corporation?

11460 Mr. Leisure: Oh, I object to that. I object to that. There are several questions in one there, and it is utterly immaterial to the question that is being asked of this witness.

Mr. MacIntyre: I am attempting to find out what became of the company that this witness was affiliated with just previous to his affiliation with the Medusa Company.

Trial Examiner Norwood: Well, you can ask him by splitting that up,—ask him about this company being a subsidiary, and so forth, as a separate question.

I understood that the Atlas Company was absorbed by

the Universal Cement Company during 1929 or the early part of 1930 and, as I understand it, it is now part of the Universal Atlas Cement Company. I was assistant to the president of the Atlas Company. I was located at the Cunard Building, New York City. At that time
11461 Blaine Smith was not in our office. He was not in the Atlas Company in any capacity whatever. Since I have served as an officer of the Medusa Portland Cement Company I have also served as president of The Cement Institute, from either the latter part of 1930 or early 1931 until the N.R.A. became effective in 1933, if that is the time. That would be my recollection.

Q. Can you recall who preceded you as president of The Cement Institute; that is, immediately preceded you?

11462 A. I don't recall.

Q. Can you say whether or not it was Mr. Blain S. Smith?

A. I think that is so; I am not sure.

Q. Do you know the name of the company in which he held a position at the time he was president of The Cement Institute?

A. My recollection is he was connected then with the Universal Portland Cement Company.

Q. Was it the Universal or the Penn-Dixie?

A. It may have been Penn-Dixie.

Q. Penn-Dixie?

A. I don't remember—

Q. In what capacity, if you know?

A. Well, he was president of the Penn-Dixie.

Q. At that time?

A. If that was the time—my recollection is not clear as to just whether it was during the period when he was with the Universal or with the Penn-Dixie.

Q. Can you recall who succeeded you as president of The Cement Institute in 1933?

A. I think it was Mr. Conn.

Q. Mr. Charles Conn?

A. Charles Conn.

Q. With what company does he hold a position?

A. The Giant Portland Cement Company.

Q. The Giant Portland Cement Company?

A. Yes.

11463 Q. In what capacity, if you know?
A. President.
Q. As president?
A. Yes.
Q. Now, at the time you were president of the Cement Institute, did your company, the Medusa Portland Cement Company have a membership in the Institute at that time?
A. It did.
Q. For the entire period of your officership of the Institute?
A. Yes.
Q. To your knowledge, does it still maintain a membership in the Institute?
A. I couldn't say definitely.
Q. Well, how recently does your knowledge go as to its membership in the Institute?
A. I should say very shortly after the N. R. A.
Q. During 1935 and 1936 you would say they were still a member?
A. Oh—I would think so, although I wouldn't say definitely.
Q. Have you held any officership with the Cement Institute than that of president?
A. No.
Q. Did you ever serve on any committees in any capacity?
11464 A. No.
Q. As a member of its Board of Trustees?
A. No.
Q. Did you, as president of the Cement Institute, frequently preside at meetings of this Board of Trustees?
A. Not frequently.
Q. Well, at times did you do so?
A. I should say once or twice.
Q. Can you fix the dates, that is, the year, the date or dates on which those meetings occurred?
A. Not definitely. I would say the last meeting was very shortly before the formation of the N. R. A.
11465 Q. Did you, as president of the Cement Institute, frequently attend meetings of members of the Cement Institute, prior to the termination of your period as president?
A. No.
Q. Never attended any meetings?

A. No.

Q. Just what were your duties as president of the Cement Institute, then, if you never attended any meetings of the Institute, Mr. McFarland?

A. At that period the Cement Institute was in
11466 what you might call a quiescent shape, it was handling nothing but freight rates. There was no occasion for meetings.

Q. You do not recall it having had any meetings, then, during the years 1930 and 1931, 1932 and the early part of 1933?

A. No, sir.

11467 Mr. MacFarland, I now show you a document which has been marked for identification as Commission's Exhibit 1458, and ask you to state whether you recognize that, and, if so, as what (showing paper to witness)?

A. (Witness examines paper.)

Q. I may add that the record shows that that was produced by the secretary of the Medusa Portland Cement Company in response to a subpoena duces tecum for material from your files.

A. I recognize it as a letter I wrote Mr. E. C. Kinney.

Q. Who was Mr. Kinney?

A. The executive secretary of the Ohio Builders' Supply Association.

Q. (Showing paper to witness.) Now, I show you document marked for identification as Commission's Exhibit 1457, and ask you to state whether or not if
11468 you recognize it as a reply to the document marked as Commission's Exhibit 1458?

A. I do.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Examine him.

11471 Trial Examiner Norwood: Mr. Harold S. Cree is recalled.

Direct Examination by Mr. Wooden.

Q Mr. Cree, some reference has been made in testimony by Mr. Crapo and possibly others—I am not sure about that—with reference to a transaction in which the Aetna is said or was said to have interfered with a contract between the Wabash Company and a purchaser with the result that Wabash put in a base price at Bay City.

In that connection I direct your attention to Commission's Exhibit 909, which is a letter of Mr. Crapo's to Mr. Johnston, the President of the Aetna Company, in which he refers to his belief that "Cree had hi-jacked a Wabash contract in a manner similar to one taken away from the Wabash a year or two ago, and that the result at this time was the same as before: *i. e.*, the Wabash dropped the base."

Now can you tell us anything about that transaction that I have directed your attention to?

11472 A. Well, do you refer to the first transaction?

Q. The first, yes, and then we will take up the second later.

A. Well, the first one was the matter where we sold this particular contractor. It was the West Michigan Construction Company, I believe, approximately 9,000 barrels of cement over at Spring Lake and Grand Haven.

Q. Where is that company located?

A. Well, I think their office was located at South Haven. I am pretty sure of that.

Q. You sold them 9,000 barrels?

A. Nine or ten thousand barrels of cement.

Q. All right. Go ahead. Tell us all you know about the transaction.

A. Well, I know that we delivered that cement, and we were very glad to deliver it because we had considerable cement in cloth sacks in that warehouse that was on the verge of getting hard.

11473 Q. Yes.

A. So I took that order at the price that was prevalent at that time by the Wabash Company. I think it was on the basis of $1.40, Bay City.

Q. You say that you took the business at the same price as Wabash price, delivered at the destination, involved?

A. Yes.

Q. So far as you know, was there any contract between Wabash and your customer?

A. On that particular job?

Q. On that particular job.

A. No; if there had have been, I wouldn't have taken it.

Q. What was the status of that customer as to his previous purchases?

A. You have reference to purchases from the Wabash Company?

Q. Or yours, yes. In other words—

A. We had sold him in the past. I don't know the various locations of the job, but I can remember selling that fellow years ago before the Wabash Company probably ever knew him.

Q. Immediately prior to this particular transaction, can you say whether the Wabash Company had him as a customer?

A. Why, they had sold him on a job just previous to this particular job. They had—the reason that they sold them, they could have sold them for $1.50, Bay
11474 City, but they came down to $1.40. He bought it at $1.40, and I had the opportunity of accepting that order on the basis of $1.50, but I refused to take it.

Q. You refused to take the order at $1.50?

A. $1.50, Bay City, I refused to take it.

Q. What did you take the order at?

A. I didn't take the order.

Q. Was that on a prior occasion?

A. Yes.

Q. To the one where you took the nine or ten thousand barrel order?

A. Yes.

Q. Yes. What happened, within your knowledge, after you took that nine or ten thousand barrel order?

A. Well, I know our cement didn't get hard. We sold the cement.

Q. Yes.

A. From our Grand Haven warehouse, and it was cement that we should have sold to people around that neighborhood, who wanted us to sell it and—

Q. Did you hear from Wabash about it?

A. Well, there was a price reflection at our mill, I believe, shortly after that on the basis of $1.50 or $1.40, our mill. I forget.

Q. What do you mean? The base was put in at your mill?

11475 A. Yes.

Q. Of that amount?

A. Yes.

Q. By whom?

A. By the Wabash Company, was quoting on that basis.

Q. Did you ever hear anything from Wabash about the taking of that particular order?

A. Hear anything from the Wabash Company?

Q. Yes, the Wabash people.

A. I can't remember of having heard anything outside of the move that they made against the so-called base price at Saginaw-Bay City.

Q. Did you ever hear anything from Mr. Johnston about the taking of that particular order?

A. Well, I was criticized for having taken it, I believe.

Q. By whom?

A. Well, I think Jennings of the Wabash was making mention of that, and it came back from him to Johnston.

Q. Just tell us what you know about it. Mr. Johnston is the president of your company?

A. Yes.

Q. Did you hear from him about the taking of that order?

A. I can't remember the details, but I did hear from him, and I explained it to him to the best of my ability.

Q. Did you hear from him in a critical way?

11476 A. Well, he criticized us for taking that business.

Q. Did he say why?

A. Well, I can't remember whether he did or not.

Q. Did you have any contact with Mr. Jennings of the Wabash Company in connection with the taking of that particular order or afterward regarding the taking of that particular order?

A. This first order of 9,000 barrels?

Q. Yes.

A. I would ask you to state that again.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Did I have any contact with him?

By Mr. Wooden:

Q. Yes.

11477 A. Well, there was a general criticism there, and Jennings was—

11478 A. There are two distinct jobs here, but one and the same contractor. You are talking about the first?

11479 Q. Yes, so far—

A. —job that I took there?

Q. Yes.

A. I thought that it was a sensible thing to take it for the interests of the company. At that time we had been turning down, as I said before—

Q. Yes.

A. —anything on the basis of $1.50.

Q. I understand Mr. Johnston criticized you for taking it. Did he say why?

A. The criticism was based upon the fact that there was a price reflection thrown by Jennings, a foreign mill, up to our plant way up north there in the woods of Bay City.

By Mr. Wooden:

Q. Oh, do you mean the Bay City base?

A. Saginaw-Bay City base.

Q. Yes.

Well, now, let's come to the second of these trans-
11480 actions to which Mr. Crapo refers in his letter, Commission's Exhibit 909. Tell us about the facts of any such second transaction?

A. Well, as I remember, this same contractor had a job for, I believe, approximately 20,000 barrels of cement, some of which was used in Indiana and some in Michigan. And we took that and took it at the time that we had lost a lot of tonnage at prices way under the price that we took this business on.

Q. Can you say on what basis you took that particular contract as to whether it was the going price for the particular destination, or what?

A. Well, the price on that job, I believe, was approximately $1.50, Bay City, something like that.

Q. Had Wabash been selling that contractor for delivery on those particular jobs when you took this?

A. O, not that we—

Q. —contract.

A. Not that I was aware of. Otherwise, we wouldn't have taken it.

Q. After you took that second job, did you hear from the Wabash about it?

A. Yes.

Q. Tell us about that. What happened?

A. I say we heard. We heard indirectly that they had had a contract on that—

11481 Mr. Leisure: Just a moment. Just a moment. If heard indirectly I think we had better know how he had heard.

The Witness: Well, I can explain that.

Trial Examiner Norwood: Explain that.

A. Yes. At that time we were not getting reports from The Cement Institute, and it appears that the Wabash Company had reported this particular contract. Now, I didn't know that, because I didn't have to go out and hijack any business. I always was able to sell our cement without the help of anybody else. And on this particular job, when I heard indirectly and directly through a man named—I think his first name is Bill, Bill Davis of the Standard, that this fellow Jennings of the Wabash did have a contract, I said, "All right, if he has got a job, why, I want to know about it." And so—

By Mr. Wooden:

Q. Is that W. A. Davis of the Standard, when you say "Bill Davis"?

A. Well, that is the same one, I guess, yes.

Q. Did you know him as an official of the Standard?

A. Yes.

Q. What?

A. That is, I didn't know what capacity. I think he was sales manager, or something like that.

Q. All right. Go ahead.

11482 A. So he happened to be in Detroit, and he called up at that particular time, and I said, "If Harry Jennings or anybody else has got a contract, we are not going to attempt to disturb that to get any business, because we are not that kind; and I would like to have him show that to me; because these people will want cement pretty soon." And Jennings refused to show his contract.

Q. Well, was Jennings there at the time?

A. No.

Q. You got this from Davis?

A. I got that from Davis.

Q. Did you take it up with Jennings as to proving that he had a contract?

A. No. Davis happened to be in Detroit and I said, "Bill, if you get Harry Jennings to show me that contract," I said, "that is fair. We wouldn't ship any cement

on that." And I waited there until about 6 o'clock that particular afternoon, and I heard from Jennings—from Davis at the last minute saying that Jennings refused to show his contract, but he thought that he had one.

I said, "Well, I don't know what to do. We have accepted this contract and you say that Jennings reported it to the Cement Institute." I said, "I am not a liar, and I tell you that we didn't know of that because we weren't getting those particular contract reports." And I
11483 said, "If Jennings will show me that he has a contract, he won't get a pound, as far as I am concerned."

So with that I left, and I went out of town, and I think I went up to Menominee, and I was gone for two or three days. In the meantime, this contracting company ordered out cement, and so we started shipping on the contract.

Q. Was any litigation ever instituted over that transaction?

A. Not that I know of.

Q. Any litigation against the Aetna Company?

Mr. Leisure: Just a moment.

A. Not that I know of.

Mr. Leisure: I think that that is going far afield, to get into litigation of transactions, or as to how it may have come out. I don't think it is material to any of the issues in this case. I object to any questions with respect to whether or not there was litigation.

Mr. Wooden: It has been intimated that there was litigation, that the Aetna was forced to pay over money on account of it.

Trial Examiner Norwood: I think that is—

Mr. Leisure: I don't think so.

Trial Examiner Norwood: I think that has a bearing as to the nature of this criticism, and so on.

Mr. Leisure: As to whether or not there was
11484 litigation?

Trial Examiner Norwood: I think so.

Objection overruled.

By Mr. Wooden:

Q. Did you ever have any conversation, or were you present at any conversation between Mr. Jennings and Mr. Johnson with regard to your taking that last contract?

A. Yes, there was.

Q. Will you state when and where it was, and the substance of the conversation?

A. Well, if I remember correctly, and I think I do, Mr. Johnson was in town.

11485 Q. Detroit, you mean?

A. In Detroit at our office, and Mr. Jennings came over there.

Mr. Leisure: Can we get the time, Mr. Wooden?

Mr. Wooden: Yes, I asked him for that.

The Witness: The time?

By Mr. Wooden:

Q. Yes, the best you can give it. What was the approximate time of the taking of this business that you have been describing?

A. The time of the conversation, you mean?

Q. Well, that is I thought an aid to that first.

A. You see, I have been—I have been out of there for two years. It is pretty hard to remember just those dates, but I think that meeting took place along in December.

Q. What year?

A. Well, it would be four years ago, I imagine.

Q. You mean as far back as '34?

A. Well, I can't—I couldn't really quite tell.

Q. All right. Go ahead with your description of the conversation that—at which you were present.

A. Well, at that time Jennings made mention that we should pay him back the 9,000 barrels of cement that we took from him.

Q. 9,000? You mean on the first transaction?

11486 A. That is on the second.

Q. I thought the second was 20,000.

A. 20,000?

Q. Yes, 20,000 barrels.

A. Yes, but he made mention of the first 9,000, I believe.

Q. And in that connection what did he say?

A. As far as the 20,000, I don't think that was mentioned at all. It was the first 9,000 he made mention that he thought we owed him that particular cement, and I think I remarked to him that I thought that was rather a pitiful condition, because if it had not been for me, he wouldn't have had the order in the first place, anyway.

Q. Well, what did Mr. Johnson have to say?

A. Well, Mr. Johnson agreed to give it back to him, I guess, if I remember correctly.

Q. You say you guess, and then you said if you remember correctly.

A. Well, I am sure he agreed to arrange to give it back to him, but, as I recollect, we never gave it back to him in tonnage or anything.

Q. You don't know, at any rate, whether any arrangement about something was ever carried through?

A. I kind of worked on the theory that Harry Jennings would just forget the thing, just a lot of idle talk.

Q. Did Mr. Johnson indicate any willingness or
11487 unwillingness to adjust the matter as Mr. Jennings wanted it adjusted?

Mr. Leisure: Now, I don't think the witness should be led in this way. He has testified to a conversation which took place between him and two other people. He is perfectly capable of telling us what took place without constantly leading him and saying: "Did they suggest this?" and "Didn't they suggest that?"

Trial Examiner Norwood: Well, I am with you in principle, but this question is not harmfully leading. Read the question.

Objection overruled.

(Question read.)

11488 Mr. Wooden: I will substitute the word "express" for "indicate."

A. Well, he was willing, because it was so decided, I believe, at least, between the two of them, that we should pay back Jennings his 9,000 barrels of cement, and I just put my horn in, and remarked that I thought it was silly, because if it hadn't been for me he wouldn't have had the contract in the first place.

Q. As I understand it, you don't know whether it was ever actually obtained or not?

A. I know—I am pretty sure that he never got his tonnage.

Q. All right.

Mr. Wooden: Will you please mark these papers for identification?

(Papers were thereupon marked for identification as Commission's Exhibits 1494-A, 1494-B, 1494-C, 1494-D, 1494-E.)

By Mr. Wooden:

Q. (Showing papers to witness) I show you, Mr. Cree, papers marked for identification as Commission's Exhibits

1494-A to E, inclusive; will you state what each of those papers is?

A. (Witness examines papers) Yes. Well, this refers to trucking in the upper peninsula.

11489 Q. Yes, that is obvious on its face, but I want to know what the papers, themselves, are, and what you know about the papers,—where they came from, or anything you know about it.

Mr. Leisure: Is that an exhibit?

Mr. Zimmerman: How they got here.

Mr. Wooden: Yes, anything he wants to tell us.

Mr. Leisure: Is that an exhibit?

Mr. Wooden: It is new.

Mr. Leisure: Has it been offered in evidence?

Mr. Wooden: No.

Trial Examiner Norwood: Not yet.

Mr. Leisure: Now, I submit the papers speak for themselves, as to what they are, and if Mr. Wooden has any questions as to identification—

Trial Examiner Norwood: That is what he is trying to do—

Mr. Leisure: —he should ask him.

Trial Examiner Norwood: —as I understand.

A. It is—

Mr. Leisure: But I do not want the witness to characterize the papers unless he is going to do it as to identification.

Mr. Wooden: That is all I want.

Mr. Leisure: If he is going to give us the

11490 substance before offered—

Trial Examiner Norwood: He wants him to characterize them but not to state the contents.

Mr. Wooden: That is right.

By Mr. Wooden:

Q. For instance, what is the paper that is marked "Commission's Exhibit 1494-A"?

A. Well, that is a memorandum referring to the—our file on trucking in the upper peninsula.

Q. Does the memorandum show where it came from, or who wrote it?

Trial Examiner Norwood: Or do you know where it came from or who wrote it?

By Mr. Wooden:

Q. Yes.

A. Well, this came from Mr. Cronkrite of the Universal.

Q. Coming to you in the mail?

A. Yes.

Q. How do you know that it came from Mr. Cronkrite?

A. Well, this little notice here is attached (indicating).

Q. Do you mean the little slip that carries Mr. Cronkrite's name in typewriting?

A. Yes.

Q. That is marked Commission's Exhibit 1494-B, is it?

A. I believe so.

11491 Q. Do you say that that little slip bearing Mr. Cronkrite's name came with the memorandum which is marked Commission's Exhibit 1494-A?

A. Yes.

Q. Now, what is Commission's Exhibit 1494-C?

A. Well, that's a file in respect to the delivery of cemen in the upper peninsula by truck.

Q. Well, that is all right. Where did it come from?

A. Well, I believe that we sent these to George Reiter of The Cement Institute.

Q. Well, I will ask you to look at Commission's Exhibit 1494-E, which is addressed to Mr. Reiter.

A. Yes.

Q. Of The Cement Institute, and bears your initials in the lower left hand corner, and ask you whether that is not what you sent to Mr. Reiter of the Institute?

A. Well, this is in my letter, certainly; it was sent.

Q. Now, is Exhibit 1494-E, which you sent, a duplicate of Exhibit 1494-C, except that you added the name of your company and filed it?

A. Evidently this was sent on by Cronkrite, then, the whole thing.

Q. What do you mean, Exhibit 1494-C?

A. This filing here.

Q. Exhibit 1494-C?

11492 A. Yes,—practically the same thing.

Q. Do you mean to say that Exhibit 1494-C was received from Mr. Cronkrite?

A. If this was attached to it, then—that's a part of it, no doubt.

11493 Q. Well, can you listen to my question and see if you can answer it more directly.

Read the question.

(Question read.)

Mr. Leisure: Now, I object to pressing the question. The document cannot do any more than speak for itself—whatever it does speak—

The Witness: I think it speaks for itself.

Mr. Leisure: —and if the document speaks for itself, I do not see how the witness can go beyond it.

Mr. Wooden: On that point it may not—

Trial Examiner Norwood: Well, we want this witness to tell us what he knows about the paper.

Mr. Leisure: Well—

By Mr. Wooden:

Q. The handwriting on Commissioner's Exhibit 1494-C, is that yours?

A. That is my handwriting.

Q. Does it refer to Mr. Cronkrite?

A. Yes.

Q. When did you put that handwriting on there?

A. Well, I evidently received this from Cronkrite.

Q. I will ask you if, after receiving that from Mr. Cronkrite, whether you then filed with the Cement Institute—

A. This letter.

11494 Q. —in the exact verbiage—the letter which is Commission's Exhibit 1494-C—or, which is it—E.

Mr. Leisure: You mean the Code Authority, when you say the Cement Institute, Mr. Wooden?

Mr. Wooden: Well, it is authority—as a matter of fact, it is after the Code, November, 1935.

The Witness: That's right.

Mr. Wooden: It is addressed to a Trade Practice Committee.

The Witness: That is correct.

By Mr. Wooden:

Q. Is that correct?

A. Yes.

Q. About which—I note that Commission's Exhibit 1494-C is dated November 5, 1935, while Commission's Exhibit 1494-E is dated November 7, 1935 (showing papers to witness). What does that mean to you?

A. Well, I took two days to write it.

Q. Looking at Commission's Exhibit 1494-A, would you say that the filing referred to is that which was proposed by Mr. Cronkrite as Exhibit 1494-C, which you executed as shown on Exhibit 1494-E?

Mr. Leisure: I object to that. The documents are not in evidence, and the witness is going far beyond any identification.

11495 A. Yes, I do.

Mr. Leisure: As to whether he saw them or knows what they are.

Trial Examiner Norwood: Have you offered them?

Mr. Wooden: Not yet, your Honor. I consider that part of the identification.

Trial Examiner Norwood: The objection is overruled.

Mr. Wooden: I am now ready to offer Commission's Exhibits 1494-A to E, inclusive, including the hand-written note which the witness has identified as his appearing on Exhibit 1494-C.

Trial Examiner Norwood: Any objections?

Examination Voirdire by Mr. Leisure.

Q. Mr. Cree, this Commission's Exhibit 1494-C and Exhibit 1494-D, are dated November 5, 1935. I think you referred to that as a memorandum. When did you see that before?

A. When did I see this before (indicating)?

Q. Yes. When did you see it first?

A. When I first received it at approximately on that date of—of the 6th or 7th of the next month.

Q. Around the 7th?

A. I imagine so. I know that copy, you know, 11496 the next day or two.

Q. Do you have any recollection of having received it?

A. Yes, very distinctly.

Q. You remember it very distinctly?

A. Oh, yes, yes.

Q. Was there the slip attached which has been marked by the reporter Exhibit 1494-A, was that attached to it when you received it?

A. Yes.

Q. You recollect that?

A. Oh, yes, I do, because I made a notation on that thing.

Q. On the slip?

A. Yes. And I remember, too, concerning that—previous to that I had filed, I believe, a trucking plan up in the Upper Peninsula, and then this was the second one.

Q. Was the Commission's Exhibit 1494-A, for identification, in its present form, attached to the memorandum when you received it?

A. Oh, I recollect—that's right, yes.

Q. Did you receive it through the mail?

A. Through the mail.

Q. And you remember having received it through the mail?

A. Quite distinctly, I would say.

Q. Yes. Do you remember what kind of an en-
11497 velope it came in, whether it came in a regular letter envelope or—

A. Well, I really couldn't tell you, I couldn't tell you that, Mr. Leisure.

Q. You do not know how it came through the mail?

A. How?

Q. Sir?

A. It came in an envelope, the particular color I don't know.

Q. You do not know whether it was a letter size envelope or a larger envelope, the full size of the paper?

A. No, I don't remember that.

Q. You do not remember that?

A. No.

Q. And then subsequent to that, you wrote the letter which is Commission's Exhibit 1494-E?

A. Yes, that's my signature there, I believe, I wrote it.

Q. Yes. There is a typewritten signature on the copy here.

A. Yes, yes.

Q. And you wrote that on the 7th?

A. On the 7th.

11500 Q. But you do remember distinctly having received it?

11501 A. Oh, I—yes, I remember that.

Q. And you do remember that it is not one of the papers that you produced before when you were here?

A. No, I do not—

Trial Examiner Norwood: Now—

The Witness: No, I don't.

Q. You are not sure whether or not this was the paper that you brought when you first came to Washington, or whether or not it was one that was sent on later?

A. No, I am not sure.

Trial Examiner Norwood: He has answered that two or three times.

The Witness: They were all mixed up, like a dog's breakfast, if you will pardon the remark.

By Mr. Leisure:

Q. Yes. Have you still papers there that belong
11502 to your former employer, where this paper came from?

A. To that I couldn't answer, but I don't think so. I think that—I think everything is cleaned out; I hope so.

Q. Well, now, the reason I have asked you these questions, Mr. Cree, when you were here before you produced this identical paper and at that time it was offered in evidence as Exhibit 39, bearing a total—separate identification number.

Look at the Exhibit 1494-E (showing paper to witness). You produced that identical paper when you were here before, and it was marked Exhibit 39, bearing a different date from the one it bears there.

A. This is November 5th.

Mr. McFadden: Yes.

Mr. Leisure: Yes, sir.

By Mr. Leisure:

Q. Now, Exhibit 39 is the identical paper dated November 5—

Mr. Wooden: Can you say whether—

A. Is it the—

By Mr. Leisure:

Q. Do you have any recollection at all as to when you produced these papers here?

A. No, I tell you I cannot—I don't—

Mr. Leisure: Well, that is all for the present, for identification, Your Honor.

The Witness: But I remember of writing price
11503 to this—

Mr. Leisure: Well, I take it that there can only

be one letter that is dated, a certain letter that is identical, and the exhibit bears the date of November 5, 1935, in the first instance, and under this marking it bears a totally different date, the same exhibit.

11505 Trial Examiner Norwood: Now, gentlemen, this may contain the same wording—

11506 That would not be any grounds for excluding it. The dissimilarity of this new proof, or the similarity to a previous exhibit, is not grounds for it being excluded, except as being cumulative, and the objection is not based on that ground.

11507 Mr. Leisure: No, it isn't but the objection is, Your Honor, on the basis that these records did not come from the corporate files. They came from the possession of a witness who is not even employed by the company at the present time.

Mr. Wooden: Well, let me ask a question on that.

Mr. Leisure: And there is a dissimilarity between the two corporate documents.

The Witness: Here is what I think happened here. May I speak?

Trial Examiner Norwood: Yes.

The Witness: I think that this lovely Miss Fawley, that you met in Washington, made copies of these things that were sent out as a replica of that which we received dated the 5th from Cronkrite, and that these copies were made two days later on the 7th of November, and I received one of them, and two others probably were

11508 given in the office to two other files. We had three files on The Cement Institute, and I think that accounts for the difference between the 5th and the 7th, as far as I can recollect.

Mr. Zimmerman: May I ask, Mr. Cree, if that accounts for you having both copies?

The Witness: Well, I had a lot of correspondence. I was doing a lot of work.

Mr. Zimmerman: That you had not only your own file but the company's file as well?

The Witness: I had a mixture of everything.

Mr. Zimmerman: I see.

The Witness: I had to have it in order to better compete.

(COM. EX. 1494-A, 1494-B, 1494-C, 1494-D, and 1494-E was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Cree, you testified last December that you had known instances where communications were received by the Aetna Company from competitors of an anony-
11509 mous character without being shown as addressed to you, or by whom they were sent. Do you class this as one of those?

A. Well, it probably has a reflection on that, that you want to bring out.

Q. What do you mean by that?

A. Well, it is—

Q. I just want to know if you put this in the same class that you testified about last December, the class of having communications that were not in the form of letters sent to you.

A. Well, yes, that did occur at different times. I can remember that.

Q. And is this one of such cases?

A. Well, it explains it, I believe. It explains itself.

Trial Examiner Norwood: You did receive it unsigned through the mail?

The Witness: Just as it came here.

Trial Examiner Norwood: In a separate envelope?

The Witness: Yes.

By Mr. Wooden:

Q. And with that little slip in typewriting bearing Mr. Cronkrite's name?

A. Yes.

Q. Who was Mr. Cronkrite?

A. He was or is, I believe, still with the Universal.

11510 Q. What was his position, as you knew it?

A. Well, I believe that Conky was, oh, assistant sales manager, or something.

Q. Located where?

A. At Chicago. I believe the main office was there.

Q. Coming back to the matter of your files, Mr. Cree, while you were with the Aetna Company, did you transact a good deal of business from your home and have files there for that purpose?

Mr. Leisure: We have been all over that.

A. Yes.

Q. You testified about a bundle of papers sent to you

after your separation from the company last December. I am asking—

11511 A. Three or four bundles.

Q. I am asking if in addition to that you had been accustomed to keep at your home files regarding the company's business transactions that you worked on and carried on its business at your home?

A. Necessarily I had to, and I did.

(There was marked for identification a document as Commission's Exhibit 1495-A.)

Q. What is this paper I show you which is marked as Commission's Exhibit 1495-A, for identification?

A. Well, that is some proposed plan of trucking. It seems to me that has been brought up before.

Q. Not this particular paper. I will stake my reputation for memory, any that I might have, on that.

Q. I was asking you to state, Mr. Cree, what Exhibit 1495-A, for identification is.

A. Well, this is a proposed plan of trucking gotten out by the Huron Company.

Q. How did you come into possession of it?

11512 Of course, I just now handed it to you, but prior to that time when did you see it before?

A. Why, I believe Mr. Rooney sent it to me or handed it to me, I can't remember.

Q. Was this among the papers in your files that—

A. Yes.

Q. —you kept at your home?

Can you state the approximate time or date to which the paper applies?

Mr. Leisure: I object to the witness saying as to what time the paper applies. He may tell what time he received it; I will not object to that. But I do object to his attempting to say as to what time the paper applies.

Mr. Wooden: Well, I am willing to make that substitution.

A. This was given to me at the time of the attempt to develop a trucking plan in the State of Michigan.

Q. Attempt by whom?

A. And I think that it is a matter of record, the time of that.

Q. An attempt by whom to develop a trucking plan?

A. This particular plan originated in the Huron Company.

Q. Was it presented at any meeting at which you were present?

A. I can't remember any meeting outside of, I
11513 believe, I talked to Mr. Rooney on this thing.

Q. Well, did you receive it from him directly?

A. I think I received it directly from—I remember I did, from Rooney.

Q. Well, now, there is some longhand writing in pencil in the upper right-hand corner. Whose writing is that?

A. Well, that is my scribbling.

Q. And who is this Frank LaSalle? Read that.

A. Frank LaSalle, that is the name of a contractor.

Q. Did it have any connection with the paper at all or with the contents of it?

A. Oh, I think that Frank LaSalle is a contractor that had a job in the Upper Peninsula, and I believe that he did our trucking on that particular job, and this thing deals with the plan of trucking in the Lower Peninsula.

Q. When did you write the name LaSalle on that paper?

A. Well, I can't tell you that, Mr. Wooden.

Q. Can't you approximate it?

A. Well, probably at the time that this paper was evident to me.

Q. Well, on the reverse side of that paper there is some handwriting. Whose is that?

A. It is my handwriting.

Q. When was that put on?

A. Well, I would imagine at the same time that
11514 this was up for discussion.

Q. What does that handwriting on the back of that paper relate to? Does it relate to any trucking plan or trucking policy of the Aetna Company?

A. It has a little scribbled reference as to what we thought would be a fair trucking plan, that we should have the privilege of trucking from any silo or cement depot, in our case, because we had to bring cement by package form instead of bulk. We didn't have a bulk boat. It is all the same thing after it got there, though.

Q. What is the handwriting on the reverse side? Is it anything in the nature of a counter-proposal or modification of the proposal that appears on it?

A. No, no counter-proposal.

Q. Which appears on the face?

A. That was our idea of trucking so that we function

around Grand Haven and other points, and within a radius of approximately 50 miles. We figured at that time that that was an economic radius, to operate in, in all due fairness.

Q. Can you say as to what extent the proposed plan in the paper, Commission's Exhibit 1495-A, was put into effect?

A. Well, that wasn't put into effect.

11515 Q. In no particular?

A. Well, it mentions here about 60-barrel loads. That went into effect, I believe. That was rather the prevalent load to carry.

Q. What about the list of counties in which trucking should be limited? Was that ever put into effect?

Mr. Leisure: I think the exhibit ought to be offered.

A. No, no.

Mr. Leisure: If the witness is going to testify further from it.

Mr. Wooden: All right. I will offer Commission's Exhibit 1495-A, for identification, and include in the offer the handwriting on the reverse side of it.

Mr. Withrow: It ought to be "A" and "B."

Mr. Wooden: I have a photograph of the reverse side of it that may be given a separate number, if that seems better.

(Thereupon the document referred to was marked for identification as Commission's Exhibit 1495-B, a photostatic copy of the reverse side of Exhibit 1495-A.)

Trial Examiner Norwood: Any objection?

Mr. Leisure: May I ask the witness a question about the paper?

11516 Trial Examiner Norwood: Certainly.

Examination on Voir Dire by Mr. Leisure.

Q. Mr. Cree, this Exhibit 1495, for identification, that carries certain writing of your own on the back, longhand writing—

A. Yes.

Q. —can you fix approximately the time when Mr. Rooney handed this to you?

A. Oh, golly, that must be about 5 years ago, four or five years ago. I have been out two years now. I don't know.

Q. And did he hand it to you as part of the discussion that you were carrying on together with regard to the subject matter of the Exhibit 1495?

A. Yes, I remember that Mr. Rooney brought that over to the office, and he was going to get out a trucking plan, and that was the plan that he said that the Huron Company submitted as a plan, and I didn't like it very well, in the interests of our particular company, because it excluded the Port of Grand Haven, which I was trying to develop, and some other things there I didn't quite like.

Q. And he brought it over to you and sponsored it as his plan?

A. Or their plan.

Q. Their plan. That is what I mean.

11517 A. Of the Huron Company; yes, sir.

Q. Do you remember that pretty distinctly, Mr. Cree, or are you just—

A. No, I remember very distinctly.

Q. —that he did that?

A. Yes.

Q. The reason I asked you if you remembered it very distinctly, Mr. Cree, I observe that it is written on the Aetna Company letterhead and not on the Huron Company letterhead.

A. No, that no doubt was a copy of the plan that he submitted.

Q. You mean, now, this is some other paper other than the one that he gave you?

A. Well, he didn't—when I say he gave it to me, he gave me the plan. He didn't give me that paper, naturally.

Q. So, then, all of this—

A. That is a copy.

Q. —this testimony we have had about your writing on the back at the time you received it, is that not correct?

A. Well, that is correct. At the time I received that, I received it from my stenographer, indirectly, you might say, coming from Rooney. This was a little counter-thought I had in the back there that I scribbled down quickly.

Q. Well, where is the document that Mr. Rooney handed to you?

11518 A. Oh, I don't know.

11519 (COM. EX 1495-A and 1495-B was offered and received in evidence.)

11520 By Mr. Wooden:

Q. The paper I show you now, Mr. Cree, marked for identification as Commission's Exhibits 1496-A, B, and C, what is it?

(Witness reads the paperwriting referred to.)

A. What is the question?

Trial Examiner Norwood: Read the question.

(Question read.)

A. Well, they are all self-explanatory.

Trial Examiner Norwood: Where did you see it?

By Mr. Wooden:

Q. What do you know about it?

A. Well, this is a memorandum that I had written up.

Q. You mean you are the author of the memorandum?

A. Yes.

Q. All right.

A. And it was my observation of this particular meeting on trucking.

Q. Do you mean that you wrote from memory?

A. That is it.

Q. Following the meeting referred to, what occurred at that meeting; is that right?

11521 A. That is right.

Q. And these papers represent what you wrote shortly following the meeting referred to?

A. That is correct.

Q. Was that memorandum made for your own use or did you distribute it among any of the people who were present at the meeting?

A. Oh, no, this was—this was following a custom that I had, and this was sent down to Mr. Johnston for his analysis, I suppose.

Q. State who were present at the meeting that is referred to?

A. Well, it mentions these various cement companies.

Q. I want to know what individuals were present?

A. Well, I know I was in it.

Q. Yes.

A. And Calvin of the Peninsula was there, and Frank Mooney of the Wolverine, he was there; Lucas of Petoskey, he was there; Medusa was represented, I am pretty sure, by J. B. John; Rooney was there representing Huron; Alpha, I can't remember who that fellow was; Marquette

had a reprsentative, I don't know who that was; Peerless, Charley Luck, I believe, or maybe Russell.

Q. Can you state—

A. Universal, I can't definitely say who repre-
11522 sented Universal. It might have been Cronkrite, but I can't quite remember that.

Q. Can your say whether or not a representative of Marquette was a Mr. Yaeger, or do you know such a man?

A. Well, I can't remember Yaeger.

Q. Or Mr. Weeker, or Mr. Coburn?

11523 A. I have met two representatives from Marquette, Coburn—I know that fellow, and then another little fellow; I forget his name. I met him once.

Q. At any rate, have you exhausted your recollection as to the individuals who were present at the meeting referred to in this memorandum?

A. Yes.

Q. That you have identified as being of your preparation?

A. Yes. I think that is about all I can remember.

Examination on the Voir Dire by Mr. Zimmerman.

Q. Mr. Cree, you have no recollection as to the name of any individual from Marquette, do you?

A. Well, I cannot definitely say whether it was Coburn or that other fellow. I can't think of his name.

Q. Now, no copy of this was sent to anyone else other than to Mr. Johnston, so far as you know?

A. So far as I know, it wasn't our policy to do that.

Q. I see. The document itself was prepared
11524 how long after the incident that it refers to?

A. Well, I usually get those things off my noodle as soon as I could.

Q. Would you have any recollection as to about how long after the incident it was made?

A. Oh, I don't know. Maybe the next day, maybe two or three days later, maybe a week later; I don't know.

Q. And it intended to epitomize your recollection of what had transpired?

A. That is right.

11528 By Mr. Wooden:

Q. I show you now two papers marked for iden-
11529 tification "Commission's Exhibits 1497-A and B," (handing papers to witness). Will you state what they are?

A. (Witness examines papers) This is a plan dealing with the trucking of cement.

Q. Which is?

A. This first plan here (indicating)—what is that?

Q. Exhibit 1497-A?

A. 1497-A; it never became effective.

Q. All right, but what is the second one, then,—what is Commission's Exhibit 1497-B?

A. Well, it says that it is a revised statement, but it never became effective.

Q. Can you say whether or not those two plans which are dated November 14,—I believe 1933,—were considered at the meeting of November 15, 1933, to which Commission's Exhibits 1496-A, B, and C relate?

A. (Witness examines papers marked Exhibits 1496-A, B, C.)

Mr. Wooden: Mark these papers for identification.

(Thereupon, papers were marked for identification Commission's Exhibits 1498-A, B, purporting to be a letter on the letterhead of The Cement Institute, Chicago, addressed to O. J. Lingemann, General Manager, Aetna Portland Cement Company, 2349 Union Guardian Building, Detroit, Mich., and signed "Cement Information Com-
11530 mittee," by B. F. Affleck, Chairman.)

A. Yes, that ties in with this.

By Mr. Wooden:

Q. You mean to say that Commission's Exhibits 1497-A and B were plans discussed at the meeting of November 15, which is Commission's Exhibits 1496-A, B, and C?

A. Yes.

11531 Mr. Wooden: I will offer Commission's Exhibit 1497-A and B in evidence.

Trial Examiner Norwood: Did you tell us where you received those plans?

The Witness: Did I?

Trial Examiner Norwood: Yes.

The Witness: No.

Trial Examiner Norwood: Where did you get them?

The Witness: Well, we must have gotten them from Rooney of the Huron Company; that was their plan.

By Mr. Wooden:

Q. Which one, the first or the revised one?

A. Well, both of them.

Q. All right.

Trial Examiner Norwood: Do you remember anything about it?

The Witness: Well, I remember, Judge, that we—that was his plan; see?

Trial Examiner Norwood: Well, was that distributed to a number of the members of the industry?

(Witness makes no response.)

Trial Examiner Norwood: It was sent to you as a proposal that you adopt, or anything like that?

The Witness: I think it was distributed at the meeting.

11532 Trial Examiner Norwood: At the meeting?

The Witness: At the meeting, yes.

By Mr. Wooden:

Q. The meeting of November 15, you mean?

A. Yes.

Trial Examiner Norwood: Can you refresh your memory from Commission's Exhibit 1496-A, B and C, and tell us whether or not it was afterward produced at the meeting, and by whom?

The Witness: Well, it was produced by Rooney at the meeting.

Trial Examiner Norwood: You remember that, do you?

The Witness: Oh, I remember that was his plan, unless my memory has gone.

Trial Examiner Norwood: Well, is one of those the original of which Commission's Exhibit 1495-A and B—A is a copy?

The Witness: Well, I believe these are just copies, aren't they?

Mr. Leisure: Everything is a copy.

By Mr. Wooden:

Q. You mean the one that has the handwriting on the back?

Trial Examiner Norwood: Yes.

Mr. Wooden: I don't think they are duplicates of that.

11533 Trial Examiner Norwood: I see.

Mr. Wooden: There is no list of copies.

The Witness: No, that's a different one, that first one, entirely different.

Q. Now, Mr. Cree, what are the papers I show you marked for identification Commission's Exhibit 1498-A and B (showing paper to witness)?

A. Well, this is a letter from the Cement Institute.

Q. You mean on its letterhead?

A. On its own letterhead.

Q. Addressed to whom?

A. This is addressed to the late Mr. Lingemann.

Q. Was he the manager of your company, the Aetna Company, at time?

A. He was.

Q. From whom?

11534 A. It was sent to him by the chairman, Affleck, I guess, Chairman Affleck.

Q. How did it come into your possession?

A. Well, like practically all that stuff, for my analysis.

11535 Q. What do you mean practically all of that stuff for your analysis?

A. Well, everything pertaining to the sale or distribution of cement got into my hands, to work it out some way.

Mr. Wooden: I will offer Commission's Exhibit 1498-A and B with the—

Trial Examiner Norwood: Let me see that.

Mr. Wooden: —with the statement that if it should prove to be a duplicate of one on the record, why, of course, I will withdraw one or the other, but I do not believe it to be a duplicate.

Examination on Voir Dire by Mr. Leisure.

Q. Where was this paper, Mr. Cree—was this paper at your home also?

A. Either at my home or the office; I don't know where it was.

Q. Well, when did you bring it to the Federal Trade Commission?

A. I don't know, I am sure.

Mr. Wooden: If I can help you, Mr. Leisure, that was brought here today.

Mr. Leisure: Thank you.

Mr. Wooden: Never seen by us before today.

By Mr. Leisure:

11536 Q. The papers brought today, where did you bring them from, Mr. Cree?

A. I brought them from my home, as I told you I did.

Trial Examiner Norwood: These are among the papers that were moved from your office, the Aetna office, to your home?

The Witness: Well, some of them; these are some of them, yes.

Trial Examiner Norwood: Yes.

Mr. Wooden: If Your Honor will recall, he testified he kept other papers there in the ordinary course of his business.

Trial Examiner Norwood: Yes. These are among those papers?

The Witness: Yes.

Trial Examiner Norwood: Were they?

The Witness: Yes.

By Mr. Leisure:

Q. And these papers that I am now referring to, Commission's Exhibits 1498-A and B, they have been at your home since you were here—since you testified in Washington?

A. Yes, if they came today.

11537 (COM. EX. 1498-A and 1498-B was offered and received in evidence.)

By Mr. Wooden:

Q. Now, Mr. Cree, I show you a folder of papers which carries the words on the outside, "The Cement Institute, 1933," and on the flap of the folder the words "Cement Institute." Do you know whose writing it is on those folders?

A. This is mine here (indicating).

11538 Q. What does that folder consist of?

A. Well, this is—

Q. I do not mean the contents of the folder so much as I mean—

A. Well, there is just—

Q. Why do you have a folder marked "Cement Institute"?

A. To file the different letters and things as received from the Cement Institute.

Q. All right.

A. We had three of them in the office, I believe.

Q. Now, there is one of the papers in that folder—there is one I have had marked for identification Commission's Exhibit 1499 (showing paper to witness). Will you state what it is?

A. Well, this refers to the effective pricing of cement.

Q. Do not state what it refers to or contains, but tell us what the paper is and how it came to be in that folder.

A. Well, it is a memorandum, evidently, sent to us about the effective date of the new price.

Q. From whom was it received?

Mr. Leisure: I object to that. The paper will speak for itself as to what it may show, and unless the witness had it handed to him personally he is not in position to say who wrote it.

Trial Examiner Norwood: Well, he can tell where he got it.

11539 Mr. Leisure: Yes, that is not the question, though, he is asking from whom it was received.

Trial Examiner Norwood: Well, he—

Mr. Wooden: I interpret that as being the same thing.

Mr. Leisure: No.

By Mr. Wooden:

Q. Where did that come into your possession, or into the possession of the Aetna Company?

A. Well, this is dated Detroit, and it is regarding—

Trial Examiner Norwood: Wait a moment.

Mr. Leisure: I object.

Trial Examiner Norwood: Now, tell where you got it.

The Witness: Well—well, I cannot definitely say where I got this thing. There is no signature here, but I imagine it came from the trustee of the Cement Institute, the local one.

By Mr. Wooden:

Q. Who was the trustee you have in mind there?

A. I don't know whether it was Rooney or Jennings; I think it was Rooney.

Q. Were you accustomed to receive, or did you receive from time to time communications from the trustee of the Institute in your section?

11540 A. I can remember that we did.

Q. Did you receive memoranda such as Commission's Exhibit 1499 from the trustee for the Institute in your section?

A. I believe I can remember that we did receive things of this nature.

Q. Now, I will ask the same question about a paper in this folder that is marked "Commission's Exhibit 1500," for identification.

A. Well, that is of the same nature.

Q. Well, I do not care about that; but where did that come from, to your best recollection and belief?

Mr. Leisure: I object to that, same question, where it came from.

Trial Examiner Norwood: Tell us what you know about it.

Mr. Leisure: And where he got it.

Trial Examiner Norwood: Do you find that in your files where you are accustomed to keep letters and circulars from this—

The Witness: Cement Institute?

Tria Examiner Norwood: —Cement Institute?

The Witness: Yes, and that evidently came from the trustee.

Trial Examiner Norwood: That is all you remember about it?

11541 The Witness: That is all I remember about it.

By Mr. Wooden:

Q. Now, I ask you the same question about the papers in that same folder marked for identification as Commission's Exhibit 1501-A and B.

A. Well, I think this came from Chicago, the office in Chicago.

Q. What office in Chicago?

A. This Cement Institute office in Chicago,—the Cement Institute.

Mr. Wooden: Now, Your Honor, I will offer the papers which the witness has identified under the numbers "Commission's Exhibits 1499, 1500, 1501-A and B," and the

folder in which they were produced is proffered for examination by Respondents' Counsel.

(Counsel examine the exhibits in question.)

Trial Examiner Norwood: Was this file one that you kept as an official of the Aetna Company?

11542 The Witness: Yes, sir.

Trial Examiner Norwood: You know this was received by the Aetna Company?

The Witness: Yes.

Trial Examiner Norwood: In the due course of business?

The Witness: That is right.

Examination on Voir Dire by Mr. Leisure.

Q. Mr. Cree—

Mr. Leisure: May I ask him a question, please?

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. —were you ever an officer or official of the Aetna Company?

A. Well, I acted as—

Q. Sales manager?

A. Sales manager and traffic manager, and things of—

Q. I notice these are all filed in the one binding.

A. Yes.

Q. Did you file that personally, Mr. Cree?

A. Well, sometimes, Mr. Leisure, and then sometimes Miss Fowley, or a little fellow, Frank Jenney, in the office, would file them.

Q. But do you—

11543 A. I believe we had three files on the Cement Institute.

Q. Did you file these, that is what I want to know about.

A. Well—the chances are that I probably did file those.

Trial Examiner Norwood: Were they filed under your observation?

The Witness: Yes; that was my own personal file—one of them—I had more than one in the Cement industry.

By Mr. Leisure:

Q. Do you mean you do not have any definite recollection whether you did personally file them, or not, Mr. Cree?

A. Well, I—I didn't do all my filing, of course, but I

usually put the letters I received in places where I could grab them whenever I would want them.

Mr. Leisure: I do not think the witness understood me. Will you read the last question?

(Question read.)

A. Well, I couldn't say definitely whether I filed them or whether Frank Jenney filed them, or Miss Fowley filed them, but I do know they were filed, and they were for my observation.

Q. Now, did you bring these papers with you today, Mr. Cree?

Mr. Wooden: I can answer that question. Counsel for the Commission never saw them before today.

By Mr. Leisure:

11544 Q. Where were these papers? Where did you get them from when you brought them here?

A. Well, that was the balance, as I stated before, of the stuff that was at my home, and that was demanded by McDonald, and told me to keep in readiness whenever they wanted them, so—

Q. And did you—

A. Pardon me?

Q. Did you have these papers at your home, and have they been at your home since you testified in Washington?

A. Yes, yes.

Mr. Leisure: We object to Commission's Exhibits 1499, 1500, 1501-A and B. They are merely typewritten copies. They are typewritten copies that have not been properly identified. The witness has said that he surmised that they might have come from certain sources. He has not shown any direct knowledge of the papers in question. There is nothing on the papers themselves to indicate who wrote them.

I submit they have not been properly identified in order that they may be introduced—

Trial Examiner Norwood: Any further objections?

These copies are the ones that you received, or is it a copy of something you received?

The Witness: Yes.

11545 Trial Examiner Norwood: Which?

The Witness: Those are copies of—

Trial Examiner Norwood: Of papers that you received?

The Witness: —papers that we received.

Mr. Wooden: You mean you made copies, and these are copies?

The Witness: We made copies.

Mr. Wooden: Of those papers?

The Witness: To accumulate the number of files that we had in our office for the Cement Institute—

Trial Examiner Norwood: Where are the originals?

The Witness: You will probably find some originals in there—I don't know.

Trial Examiner Norwood: I do not see how I can take those in that way.

Mr. Wooden: Well, your Honor, it is the same proposition that we had before.

Mr. Leisure: It is very different.

Mr. Wooden: Let me ask the question and get this straight, Mr. Cree.

By Mr. Wooden:

Q. Mr. Cree, look at Commission's Exhibit 1500 for identification, please.

A. (Witness examines paper.)

11546 Q. Is that paper one that was copied in your office and put in this file, or is it a paper that was received by you in the mail and put in this file?

Mr. Brick: If he knows.

A. Well, I couldn't—I couldn't tell. I don't know what kind of a type ribbon she had. She might have copied it, or this might have been one that we received through the mail. That—that is pretty hard to determine—I couldn't.

Q. What did you do with—

A. Here is one that—that is a little bit different, isn't it (examining paper)? That might have been—

Q. That is Exhibit 1499 you are talking about now, is it not?

A. Well—

Q. If you made copies and put in this file, where are the originals?

A. Well, we didn't get it, and maybe this is the original, I don't know. This might be the original thing they sent to us.

Mr. McFadden: And it might not.

By Mr. Wooden:

Q. You testified that you were accustomed to receive, I believe, material like that from the Trustee of the Institute in your district?

11547 A. Yes, quite often; I remember we received memoranda like that, and on blank paper that way, there was no—

Q. If you had copies made in your office, why isn't there any indication of the fact that they are copies, or that any particular person made them?

A. Well, I—I am sure I don't know. I can't tell you whether we received these as they are, or whether they were copied as received, and these are copies.

Trial Examiner Norwood: Well, these are marked for identification, and we will hold them, and you can get further information out. I will not receive them now.

Mr. Wooden: Your Honor, in the event that proves incompetent, I will propose to reoffer them on the ground that they are the best available.

Trial Examiner Norwood: Well, I will study the record and see just what we have on that, or you may find some other exhibits that serve to identify them—

By Mr. Wooden:

Q. Let me ask you this, Mr. Cree.

Were you accustomed to receive from the Trustee of the Institute in your section communications which did not show on their face that they came from the Trustee?

Mr. Leisure: Now, I object to that question. "Receive from the Institute" without it showing where they came from. Obviously this witness cannot answer that 11548 question.

Trial Examiner Norwood: Well, he can say that—

Mr. Leisure: He can tell what he knows about any documents that he got.

Trial Examiner Norwood: He can tell if—

Mr. Leisure: And say how he got them.

Trial Examiner Norwood: He can tell what he was accustomed to do. The objection is overruled.

Mr. Leisure: I do not see how he can say where he got them from if there is nothing on them to show.

Trial Examiner Norwood: He did say that he received papers like that, and there was a card attached to them, and he might know where they came from from other circumstances.

Mr. Wooden: And the post mark might have shown.

Trial Examiner Norwood: The objection is overruled. Answer the question.

Read the question.

(Question read.)

A. Well, we received at times a blanket memorandum like that, just sent to us for our files.

Q. From whom?

Mr. Leisure: I object, from whom, unless there is some showing.

A. I don't know, Mr. Wooden.

11549 Mr. Leisure: Just a moment.

A. (Continuing) I—I think probably we did from the custody of the Cement Institute, or maybe from Mr. Reiter. I know there was a lot of things came through the mails in those days.

Mr. Wooden: Your Honor, I submit that the papers offered should be received at this time.

Trial Examiner Norwood: No, I shall not receive them now. Proceed.

11550 Mr. Wooden: There has been testimony, Your Honor, and there has been a fairly substantial amount of it, that anonymous circulation of information was carried on, and those contain instructions as to how to figure prices and on what.

Trial Examiner Norwood: But this man cannot tell us whether these are the originals or whether they are the copies, whether they are exact, or whether they are not.

Mr. Wooden: Perhaps not at that time, but later on I propose to ask that the exhibits that were numbered in this Cement Institute folder be removed from the folder. The record will show that they were in such a folder.

Trial Examiner Norwood: Until they are received in evidence, you had better keep them intact.

Mr. Wooden: I will. Give this the next number.

Trial Examiner Norwood: I think you had better mark that folder for identification. Mark that "1501-C."

(The folder referred to was thereupon marked for identification as Commission's Exhibit 1501-C.)

By Mr. Wooden:

Q. Is the paper marked as Commission's Exhibit 1501-C, for identification, the folder about which you have been testifying to some extent?

A. That is the Cement Institute one, yes.

11551 Q. Is it the one about which you have been testifying?

A. It is.

Q. Were you accustomed to put into that folder, or other folders, the communications which you received from The Cement Institute, or its trustee?

Mr. Leisure: I object to that.

A. I was.

Mr. Leisure: We have been all over that and the witness has testified about it, about how he filed it sometimes or might have filed sometimes, and he named other people who might have filed it. We have been over that same ground.

Trial Examiner Norwood: The objection is overruled. Let him put that in. I think it is partially covered, at least.

Mr. Wooden: Did you get the answer?

The Reporter: Yes, sir.

Mr. Wooden: Mark this with the next number, please.

(The documents referred to were thereupon marked for identification as Commission's Exhibits 1502-A, 1502-B, 1502-C, 1502-D, 1502-E and 1502-F.)

By Mr. Wooden:

Q. What are the papers I show you now marked as Commission's Exhibits 1502-A to F, inclusive?

11552 A. Well, this is a very lengthy letter of July 23th, way back in 1930, written to Mr. Johnston, written by me.

Q. Written by you?

A. I believe so.

Q. It is under the name of Mr. Lingemann. How about that?

A. It was signed by him but it was written by me.

Q. In other words, you prepared it for Mr. Lingemann's signature?

A. Yes, that is right.

Mr. Wooden: I will now offer it in exidence.

Mr. Leisure: May I ask Mr. Cree a question, please?

Trial Examiner Norwood: Yes.

Examination on Voir Dire by Mr. Leisure.

Q. Mr. Cree, this exhibit for identification, 1502-A, B, C. D. E. and F, is this one of the papers you bought today?

A. I don't know. I imagine it is. I haven't seen that thing for quite a while.

Mr. Wooden: I can answer that again, Mr. Leisure. That is one of the paper brought today.

By Mr. Leisure:

Q. And where was this paper, Mr. Cree; that is, where did you get it?

A. That was at my home.

Q. And has it been there since you testified in Washington?

11553 A. Yes.

Mr. Leisure: We object to the paper, the exhibit, rather, as being incompetent, irrelevant, and immaterial. It is a long statement to Mr. Johnston. There is no showing that it was made within the line of duty of the witness in any way. He says he is the author of it. There is no showing that he was acting within his authority.

Trial Examiner Norwood: I will reserve ruling on this until the next hearing, and I will have time to study it.

Mr. Wooden: Mark this the next number, please.

(The documents referred to were thereupon marked for identification as Commission's Exhibits 1503-A, 1503-B, 1503-C, 1503-D, 1503-E, 1503-F, 1503-G, and 1503-H.)

By Mr. Wooden:

Q. I now show you papers marked for identification as Commission's Exhibits 1503-A to H, inclusive. What are those papers?

(Witness examines the papers referred to.)

Q. All right, Mr. Cree. Have you answered the question yet?

A. This is a letter that Mr. Johnston wrote and based upon that letter that I sent to him.

11554 Q. Which letter that you had sent to him?

A. The previous exhibit.

Q. You mean Commission's Exhibit 1502-A to F, inclusive? You say 1503-A to H is a letter of Mr. Johnston's?

A. Based upon this letter (indicating).

Q. It is marked at the top "X-Copy, Mr. O. J. Lingemann."

A. Yes.

Q. How did that letter come into your possession, the copy of it?

A. Well, it was given to me.

Q. By whom?

A. Oh, probably Mr. Lingemann. What does it say? "Extra Copy"? Yes. Well, Mr. Lingemann just gave it to me, that is all.

Q. And it relates—

A. To complete the file.

Q. It relates to the matters that are contained in Commission's Exhibits 1502-A to H?

A. Yes.

Mr. Wooden: I will offer Commission's Exhibits 1503-A to H, inclusive.

Mr. Leisure: May I ask a question?

Trial Examiner Norwood: Yes.

Examination on Voir Dire by Mr. Leisure.

11555 Q. Mr. Cree, this Exhibit 1503-A to H seems to be a letter, a copy of a letter written by Mr. Johnston to Mr. Schmutz of the Bessemer Company, and a copy forwarded to Mr. Lingemann; is that correct?

A. That is correct, yes.

Q. And you had this copy in your files?

A. Yes.

Q. And that is the last of the exhibits that we have been talking about that you produced today?

A. Evidently. I haven't seen that for quite a while. Mr. Wooden said it came today, so that is correct.

Mr. Wooden: I can answer that as before. That was among the papers produced today.

By Mr. Leisure:

Q. And it was in your files since you testified?

A. At my home.

Q. In Washington, at your home?

A. Yes, it was.

Mr. Leisure: We make the same objection to this exhibit, Your Honor.

Trial Examiner Norwood: I will reserve the ruling on this until our next hearing.

Mr. Wooden: Mark this the next.

(The documents referred to were thereupon marked for identification as Commission's Exhibits 1504-A and 11556 1504 B.)

By Mr. Wooden:

Q. Mr. Cree, what are the papers I show you now marked as Commission's Exhibits 1504-A and B, for identification?

A. Well, this is some proposed marketing plan. I can't quite remember this thing.

Q. Is it on the letterhead of the Aetna?

A. It is a copy of something that we received.

Q. Can you say from what source it was received?

Mr. Leisure: Now, if Your Honor pleases, I think the witness can testify as to where he got the paper but to attempt to look at it and say from where it came I think is improper.

Trial Examiner Norwood: Counsel's point is well taken. Can you suggest where the paper came from?

The Witness: I can't tell, Judge, where this came from. Somebody had an idea on a marketing plan.

By Mr. Wooden:

Q. Can you say whether it was among the papers you produced today?

A. No, I can't tell you that, either.

Mr. Wooden: I can say for what it may be worth, that it was.

By Mr. Wooden:

Q. Can you say whether or not that paper was in 11557 your files at your home?

A. Oh, it was.

Trial Examiner Norwood: It is on Aetna stationery.

By Mr. Wooden:

Q. Can you by reference to the five-cent dealer allowance approximate the time that it relates to?

A. Well, I can't definitely. It might be at the time that there was a fluctuation of thought as to proper marketing plan, and there were two or three different plans in the air at that time?

Q. When was that?

A. Well, I don't know. I think we have something as a matter of record on the Lehigh plan that might be of the same period. I don't know.

Q. Was that about 1930?

Mr. Leisure: Object to the leading.

A. I can't remember.

Trial Examiner Norwood: Objection sustained.

Mr. Wooden: I will offer 1504-A and B as a document from the files of a Respondent Company.

Mr. Leisure: We object to it as being incompetent, irrelevant, and immaterial, no basis laid whatever for its reception in evidence. It has not been properly identified as being binding on any of the Respondents.

Trial Examiner Norwood: I will hold it in re-
11558 serve until the next hearing.

Go ahead.

Mr. Wooden: Mark this the next.

(The document referred to was thereupon marked for identification as Commission's Exhibit 1505.)

By Mr. Wooden:

Q. Can you say, Mr. Cree, what this paper is that I show you marked as Commission's Exhibit 1505, for identification?

A. Well, this is another plan, a revised plan, it states here, of marketing of cement.

Q. Well, what do you know about the paper itself? What is that paper?

A. Evidently, if you have it. I can't remember who it came from, though.

Q. We have a lot of papers that didn't come from your files.

Did you ever see anything like that before?

11559 Mr. Leisure: I object to that. It doesn't matter whether he did or not.

Trial Examiner Norwood: Tell us what that is, or where you received it, or whether you know what it is or not.

Mr. Leisure: He said he couldn't tell. He didn't know where it came from, your Honor.

Trial Examiner Norwood: Yes.

The Witness: Well, it refers to a marketing plan, revised, and it was gotten out at the time of the Cement Institute for the N. R. A., or previous to that.

Trial Examiner Norwood: But it came from the Aetna's files?

The Witness: I can recall it as being in the Aetna files or one similar to that.

Mr. Wooden: I will offer it on the basis of it being a

paper or a document which was located in the files of the Aetna Company, a Respondent in the case.

Mr. Leisure: We make the same objection.

Trial Examiner Norwood: Ruling reserved.

By Mr. Wooden:

Q. Mr. Cree, following your discharge from the service of the Aetna Company, I believe in July, 1936, is that right?

11560 A. Yes.

Q. Did you have a conversation with a Mr. Baker, an official of the Peerless Cement Company?

A. Yes, I did.

Q. Who is Mr. Baker?

A. Well, Bob Baker is president of the Peerless Portland Cement Company in Detroit.

Q. What was the conversation you had with him?

A. Well, I approached—I approached Bob as to getting a job selling cement, and the conversation really was fundamentally based upon that approach of me getting a job with the Peerless Cement Company selling cement for them.

Q. Well, that is—

Mr. Leisure: Can we get the time fixed on this conversation, please, Mr. Wooden?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. Would you fix the time, please, Mr. Cree, as close as you can?

A. Well, I didn't lose much time after I was kicked out of the Aetna Company. I approached him three different times and probably over an interval of three months after that particular July that I remember well.

Q. Did you ever have a conversation with Mr.

11561 Baker with reference to a dinner attended by your competitors?

A. Well, yes, I can remember Mr. Baker. I first saw him there. It was shortly after a dinner that he had remarked that he had attended down at the Book Cadillac Hotel, and he had met the president of the company, Mr. Johnston, and Mr. Calvin, and others who had been there. I forget who he mentioned.

Q. How long after your discharge was that?

A. Well, I think that was practically immediately.

Q. Do you know how that dinner was paid for, or who paid for it?

Mr. Leisure: Oh, I object to that. It is immaterial to any of the issues in this case, as to who paid for a dinner. We have had enough about who paid for cement without getting into who paid for dinner.

Mr. Wooden: Whoever paid for the cement paid for that dinner.

Mr. Leisure: Well, I think it is immaterial.

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. Well, I don't really know; but I imagine the Aetna Company paid for it, because—

Trial Examiner Norwood: Wait a minute.

Mr. Leisure: Well, I object to that.

11562 The Witness: Because talking about—

Mr. Leisure: Just a minute, now. The question has been answered. The witness says he doesn't really know.

Trial Examiner Norwood: If you want to bring out any facts to base an inference as to who paid for it, that is another matter.

By Mr. Wooden:

Q. Who is A. E. O'Neil?

A. Well, he was the bookkeeper for the Aetna Portland Cement Company.

Q. Did he remain there after your discharge?

A. For about a month, maybe two months.

Q. Did you ever have a conversation with Mr. O'Neil as to who paid for that dinner?

A. Well, I talked to him right after that. He made mention to me over the telephone—I hadn't seen him, and—

Mr. Leisure: I want to object to this same question as being entirely immaterial and having nothing to do with the issues in this case.

Trial Examiner Norwood: Objection overruled.

11563 *Cross-Examination by Mr. Leisure.*

Q. Mr. Cree, where were you when you were subpoenaed today?

A. Pardon me?

Q. Where were you when you were subpoenaed, when you received your subpoena today to come here today?

A. Well, I didn't receive a subpoena. I was told that I would get one.

Q. Now, you mentioned that you kept some of these files at your home when you were working for the company.

A. Yes.

Q. Now, as to these files, did you write some of the letters, dictate them there at your home?

A. No, no.

11564 Q. I understood you to say on direct examination that you did considerable work at home. That is why I asked.

A. Yes, nights and days, Sundays and holidays.

Q. Did you dictate some of these files there?

A. No.

Q. And what work do you speak of that you did at your home?

A. Well, all the work that would better the Aetna Company to sell their cement and meet this competition, and it took me a lot of times in figuring bids, and so forth, until 4 or 5 o'clock in the morning, believe it or not, because I had no one but myself to figure out everything.

Q. And you had—

A. And I could—

Q. And you had copies and letters there to refer to to do this work that you did at home?

A. Oh, I had everything complete, tariffs and everything.

Q. You had a complete file at your home of your office work; is that it?

A. Well, I wouldn't say a complete file, but I had at all times everything necessary that I could properly carry on, according to my own little ability, don't you know.

Q. Did you have any office at your home?

A. Well, I had all the papers and tariff sheets, and stuff like that that was necessary; see?

11565 Q. That is, you had a miniature office of your own there at home, is that it?

A. Yes. For instance, I can remember one time correctly—

Q. Is that correct, Mr. Cree?

A. A miniature office?

Q. Well, did you have your working papers, and an office there at your home?

A. Yes, according to what was commensurate with that operation from my home; see?

Q. And that was while you were working for the Aetna Company?

A. At some time, especially at night.

Q. Now, I notice that you had a memorandum of a trucking meeting which you say you wrote up afterward. Did you customarily write up your actions with respect to your company after they had transpired?

A. I did to quite an extent, yes. In fact, Mr. Johnston wanted me to continue doing that.

11567 A. H. INGLEY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am secretary and treasurer of the Standard Portland Cement Company. I have been treasurer since 1925 and secretary since about 1928 or 1929. In my position as treasurer of that company I issue checks to the salesmen and other employees of the company. I would
11569 check those cancelled checks as they were returned before auditing and, generally speaking, as they came in I noted the endorsements of the men to whom they were drawn. In my position as treasurer and later as secretary and treasurer it has been the practice of the traffic manager, David T. Rupsell, of the Standard Cement Company to report to me in a general way. He has held that position for approximately the last 2½ years. He was proceeded in that position by Walter C. McAdoo. In connection with the return of cancelled checks of the salesmen and other employees, the checks of Mr. McAdoo were included among those which I examined as they were returned. As traffic manager he reported to me at times.

Q. Have you, as a result of such reports of his to you, and also the examination of his endorsements on
11570 canceled checks that you had issued to him, become acquainted with, or have you come to know his signature?

A. At the time that he was with us, I was quite familiar with his signature, but it has been some three or four years, I would say, since he has been with us.

Q. Do you have some recollection of the appearance of tht signature, as you came to know it at that time?

A. In a general way; yes, sir.

Q. Mr. Ingley, I show you a document marked as Commission's Exhibit 1043-4X, and I ask you to state whether or not you recognize the initials "W. S. M." as those of Mr. Walter S. McAdoo who was formerly traffic manager of the Standard Portland Cement Company,—that is, as in his handwriting,—do you recognize those as his initials, in his handwriting?

A. I would be prone to say that probably they are his —that is, in his handwriting; yes, sir.

Q. Are you basing his statement in that respect upon your examination in the past of his handwriting, as appearing on his canceled checks that were returned to you, and as to his reports that were made to you from time to time?

A. That is my recollection, but you must remember that that goes back some three or four years.

Q. Yes, I think—I appreciate that.

Mr. MacIntyre: That is all.

Mr. Wooden: Just a moment.

11571 Trial Examiner Norwood: Examine him.

Mr. MacIntyre: Just a second.

That is all.

Mr. Leisure: May we see the exhibit?

Mr. MacIntyre (handing paper to Mr. Leisure): Handle it rather carefully. It is about to come out of that book. We will have to have it rebound.

Trial Examiner Norwood: Any cross examination?

Mr. Leisure: No questions.

11572 FREDERICK PICKFORD was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Pickford, referring to your testimony of last Tuesday, November 15, 1938, to the effect that you would attempt today to comply further with your subpoena duces tecum that had been served upon the Medusa Portland Cement Company, of which you were at that time making partial compliance, I will now ask you to state whether or not you are prepared at this time to make further compliance—

A. I am.

Q. —to the subpoena referred to?

A. Yes, I am.

Q. What documents do you have at this time to produce in response to that subpoena?

A. These documents are correspondence received from our traffic manager as called for under the subpoena.

Q. What documents are you referring to now? Have they been marked for identification?

11573 A. This package right here (indicating).

Q. And they are marked for idetication as what?

The Witness: As 1506 and following.

(The papers referred to by the witness were marked for identification as follows: Commission's Exhibits:

1506	1507	1508
1509	1510	1511
1512	1513	1514
1515	1516	1517
1518	1519	1520
1521	1522	1523-A, B
1524	1525	1526
1527	1528	1529
1530	1531-A-E, inc.	1532
1533-A, B	1534	1535
1536	1537	1538
1539	1540	1541
1542	1543	1544

	1545	1546	1547
	1548	1549	1550
11574	1551	1552	1553
	1554	1555-A to L	1556-A to D
	1557	1558	1559
	1560-A, B	1561	1562-A, B, C
	1563	1564	1565
	1566	1567-A, B	1568
	1569	1570	1571
	1572	1573	1574-A to D
	1575	1576	1577
	1578-A to H	1579-A to H	1580
	1581	1582	1583
	1584	1585	1586
	1587	1588	1589
	1590	1591	1592
	1593	1594	1595
	1596	1597	1598
	1599	1600	1601
	1602	1603	1604
	1605	1606	1607
	1608	1609	1610
	1611	1612-A to D	1613
	1614	1615	1616
	1617	1618-A to F	1619
	1620	1621	1622
	1623	1624	1625
11575	1626	1627	1628
	1629-A, B	1630	1631
	1632	1633	1634
	1635	1636	1637
	1638-A, B	1639	1640
	1641-A, B	1642	1643
	1644-A, B	1645	1646
	1647	1648-A, B	1649
	1650-A, B	1651	1652
	1653	1654	1655
	1656	1657	1658
	1659	1660	1661
	1662	1663	1664
	1665	1666	1667
	1668	1669	1670
	1671-A, B	1672	1673
	1674	1675-A, B	1676

	1677	1678	1679
	1680	1681	1682
	1683	1684-A, B	1685-A, B
	1686	1687-A, B	1688-A, B
	1689	1690	1691
	1692	1693	1694
	1695	1696	1697-A, B
	1698-A, B	1699	1700-A, B
11576	1701-A, B	1702-A, B	1703-A, B
	1704-A, B	1705-A, B	1706-A, B
	1707	1708	1709
	1710	1711	1712
	1713	1714	1715
	1716	1717	1718-A, B
	1720	1719	1721
	1722	1723	1724
	1725	1726	1727-A to G
	1728	1729	1730
	1731	1732	1733
	1734	1735	1736
	1737	1738	1739
	1740	1741	1742
	1743-A, B	1744	1745
	1746	1747	1748
	1749	1750	1751
	1752	1753-A, B	1754
	1755	1756	1757
	1758	1759	1760
	1761	1762	1763
	1764	1765-A, B	1766
	1767	1768	1769
	1770	1771	1772
	1773	1774	1775
11577	1776	1777	1778
	1779	1780	1781
	1782	1783	1784
	1785	1786	1787
	1788	1789	1790
	1791	1792	1793-A to D
	1794	1795	1796
	1797	1798	1799
	1800	1801	1802
	1803	1804	1805
	1806	1807	1808

1809	1810	1811
1812	1813	1814-A to C
1815-A to C	1816-A, B	1817
1818	1819-A, B	1820
1821	1822	1823
1824	1825	1826
1827	1828	1829
1830	1831-A, B	1832
1833	1834	1835
1836	1837	1838
1839	1840	1841
1842	1843	1844

11578 Q. Now, Mr. Pickford, I ask you to state whether or not those exhibits marked, for identification, with those numbers are the ones to which you referred as producing here in further partial compliance with the subpoena that we have referred to?

A. Yes, they are.

Q. Where did you get them?

A. From our traffic manager.

Q. When you say "our traffic manager"—

A. The traffic manager of the Medusa Portland Cement Company.

Q. Who is he?

A. G. W. Cole.

Q. Where did he tell you he got these documents?

A. From his files.

Q. From his official files as traffic manager of the Medusa Portland Cement Company?

A. His departmental files.

Q. Did he say anything further to you about them?

A. No, nothing special that I could recall.

A. Are there any memos or charts or other documents in this group that do not purport to be signed by one or addressed to anyone that he made any statement to you about? As to what they purport to be, as to who signed them, if they do not purport to be signed by any particular person?

11579 A. I don't know. I haven't gone through it.

Q. He didn't discuss the memos or charts or drafts or tabulations that appear in there with you?

A. No, he made no particular comment.

Q. He did tell you that he was taking them—he had taken them from the files of the Medusa Portland Cement

Company in response to that subpoena at your request; is that right?

A. Yes, he did.

Q. And you are so producing them here in response to that subpoena?

A. I am.

Q. Well, how could you and how did you or Mr. Cole or you and Mr. Cole determine that these document were called for under the subpoena about which we have been speaking?

A. I explained to Mr. Cole what the subpoena called for, and I assume that is what he produced.

Q. You told him what the subpoena called for, and you told him to get those documents out of the file?

A. Yes.

Q. And he took those documents out of the files and handed them to you, and these are the documents?

A. These are the documents.

11581 Trial Examiner Norwood: These are produced under subpoena duces tecum, and I shall keep them in my custody for examination for counsel on either side, and either side may take photostatic copies of them until such time as they are either offered in evidence or I can return them to the producer.

Mr. Leisure: We object your Honor, to that procedure, to the Commission being allowed to see them prior to the time that your Honor has passed upon their materiality or relevancy, and we ask that the objection be noted.

11584 D. H. MacFARLAND, a witness having been previously called by the Commission and having been previously duly sworn, was further examined and testified as follows:

Trial Examiner Norwood: Go ahead.

Direct Examination by Mr. MacIntyre.

Q. Mr. MacFarland, I show you a document bound in a folder marked for identification as Commission's Exhibit 1501-C, purporting to be a report on a meeting of the Board of Trustees of the Cement Institute, held June 16, and the report being dated June 17, 1933. I will ask you

to look at that and state whether or not you recognize it, and if so, as what?

11585 A. I don't recall it as my signature and typewriting.

Q. Do you recall having presided over a meeting of The Cement Institute as of—that is over a meeting of the board of trustees of The Cement Institute as of the date of June 16, 1933, at which a resolution such as mentioned there was considered, and at which meeting there was any identification of the people whose names appear on the sheet at which you are now looking?

A. Well, that is such a long time ago I don't recall the meeting, but there is an official record in the minutes of The Cement Institute which are available.

Q. Well, does that appears to be a report on the minutes of such a meeting?

Mr. Leisure: May we have this document that the witness is referring to marked for identification?

Mr. MacIntyre: It is in the binder marked for identification as Commission's Exhibit 1501-C.

Mr. Leisure: But the document is not marked.

Mr. MacIntyre: It is a part of the binder now.

Trial Examiner Norwood: The document may be marked for identification as Commission's Exhibit 1845.

Mr. MacIntyre: Your Honor, we nevertheless want the record to show that it is in the binder.

Trial Examiner Norwood: It already shows that.

Mr. MacIntyre: Of the material already in the

11586 binder marked for identification as Commission's Exhibit 1501-C.

Mr. Leisure: Now, if that is part of the official minutes, the official minutes are already in evidence. I see no reason for duplicating that.

Trial Examiner Norwood: I think he offered those to the witness for refreshing his recollection and memory.

Mr. MacIntyre: Mr. Leisure, I am not making an offer of this particular document in evidence at this particular time. I am merely asking the witness to refresh his memory and recollection as much as he can.

Mr. Leisure: But you asked him to testify from that thing.

Trial Examiner Norwood: Read the question.

(The last question was read.)

(The document referred to was thereupon marked for identification as Commission's Exhibit 1845.)

A. May I answer that?

Trial Examiner Norwood: Yes.

A. I would say it appears to be a record, but it is one of those things so long ago I would depend on the record on the actual minutes of the Institute to determine.

Trial Examiner Norwood: You can't look at that and refresh your memory as to what occurred at that meeting?

11587 The Witness: I would say no.

By Mr. MacIntyre:

The witness identified Com. Ex. 1456 as a letter, dated July 29, 1931, that he wrote to Mr. W. W. Campbell, president of the National Builders' Supply Association, sending him a cartoon; Com. Ex. 1455 as a letter that he wrote, dated July 25, 1931, to W. W. Campbell, president of the National Builders' Supply Association, enclosing another cartoon; both of these letters were as vice president of the Medusa Cement Company. I was also president of the Cement Institute when I wrote these letters.

Q. Weren't you during that period of time that you were writing those letters president of The Cement Institute?

A. I was.

Mr. Leisure: I think the record should show that Counsel is now going through the exhibits which has been identified as 1506 to 1844.

Trial Examiner Norwood: Yes, produced under
11588 the subpoena.

Mr. Leisure: And is now going through it before the Examiner has passed upon the materiality or the relevancy.

Trial Examiner Norwood: I will pass on it before he uses it.

Mr. Leisure: He is using it now.

Mr. MacIntyre: I am attempting to determine whether this witness on the stand can identify any of the papers in this group which were produced under the subpoena before we release the witness on the stand.

Mr. Leisure: I want to object to Counsel's procedure.

Trial Examiner Norwood: You do object, you say?

Mr. Leisure: Yes, we object.

Trial Examiner Norwood: The objection is overruled.

11589 I am attempting to determine whether any of those documents were written by the witness or purported to have been written by him.

Mr. Leisure: I move that be stricken from the record.

Trial Examiner Norwood: Motion allowed.

Mr. MacIntyre: If Your Honor please, that is an answer to the objection he raised—

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

By Mr. MacIntyre:

Q. Mr. MacFarland, I ask you to state whether or not you are acquained with the handwriting of Mr. George W. Cole, traffic manager of the Medusa Portland Cement Company?

A. I am.

Q. Have you seen the writing? Have you seen him write his name or write notes in his handwriting?

A. From time to time, yes.

Examination by Trial Examiner Norwood.

11590 The witness recognizes the handwriting of George W. Cole appearing on Com. Ex. 1713.

Examination by Mr. MacIntyre.

The witness would say that the whole notations are his, but the witness would not identify them positively; but the G.W.C. he is very sure of. The G.W.C. he is sure of as being the handwritten initials of Mr. George W. Cole, and the other handwriting appearing on "that" exhibit appears to be his; the witness was shown a document marked for identification as Com. Ex. 1643, and asked to state whether or not he can recognize the handwrit-

11591 ing appearing thereon. The witness said: "It looks to me like George W. Cole's writing '. He would not identify it positively, though; judging from other samples of his writing that the witness has seen, and the handwriting that he has seen him do, the witness would judge that it is Mr. Cole's, and he recognizes it as such in so far as he is certain as to whose it is; the witness identified

Com. Ex. 1641 A and 1641 B as apparently a multigraph copy with Mr. Cole's signature apparently on the original. He means that "that" would appear that "that" is what had been on the original, because "that" is his signature. That is Mr. Cole's signature.

11592 *Examination by Trial Examiner Norwood.*

The witness would call "it" a multigraph copy. The actual signature has apparently been reproduced.

Examination by Mr. MacIntyre.

The witness would say that it was a reproduction of Mr. Cole's signature; and he knows it. The witness was shown a document which has been marked as Com. Ex. 1629 A and 1629 B, and asked to state whether or not he recognizes the handwritten initials "J.B.J." and "G.W.C." as appearing on 1629 A and, if so, in whose handwriting they are. He does not recognize those, the handwriting "J.B.J." nor "G.W.C." He would say that "this" is G.W.C.'s initials. That may be (indicating). He is not sure of that.

11593 *Examination by Trial Examiner Norwood.*

He is referring to both of them, these two (indicating).

Examination by Mr. MacIntyre.

He would say that "J.B.J." was put in there by Mr. Cole.

Examination by Mr. MacIntyre.

He would say that the handwritten initials "J.B.J." and "G.W.C." appearing thereunder and then again "G.W.C." as appearing down here in the center of the letter are all in the handwriting of Mr. G. W. Cole of Medusa; the handwriting in pencil notes appearing near the bottom of
11594 Com. Ex. 1629 B is G. W. Cole's. He recognizes the one in the middle of that, in pencil, Com. Ex. 1614, as the handwriting of Mr. G. W. Cole; the witness was shown documents marked for identification as Com. Ex.

1612 A, B, C, and D, and particularly a facsimile or reproduced signature purporting to be that of Mr. G. W. Cole as appearing on 1612 D, and asked to state whether or not he recognizes that; and, if so, as whose signature. The witness said: "It is a reproduction of G. W. Cole's signature"; the pencil initials of "G.W.C.", appearing upon the center of each of these pages, Com. Ex. 1607 and 1608, are in the handwriting of G. W. Cole.

11595 The witness recognizes the pencil handwritten initials down in the lower left corner on Com. Ex. 1604 as the initials of George W. Cole in his handwriting; the witness recognizes the handwritten initials in pencil occurring in the center of "that page", Com. Ex. 1604, as the initials G. W. C. and in the handwriting of George W. Cole; the witness recognizes the handwritten initials in pencil "G. W. C." appearing near the bottom of "that page", Com. Ex. 1594, as in the handwriting of G.

11596 W. Cole; the witness recognizes the handwriting of the pencil note appearing in the upper left hand corner of "that page", Com. Ex. 1591, as the handwriting of G. W. Cole; the initials are G. W. Cole's; the witness recognizes the handwritten initials appearing in the center of "that page", Com. Ex. 1590, in pencil "G. W. C." as G. W. Cole's initials in his handwriting; the witness recognizes the handwritten initials in pencil near the center of "that page", Com. Ex. 1588, "G. W. C." as

11597 apparently Mr. Cole's initials, and he recognizes it as in his handwriting. He would say that the penciled notes in the upper left hand corner of "the page" are in the handwriting of G. W. Cole; he recognizes the handwriting in pencil appearing in the center of "that page", Com. Ex. 1585, as G. W. Cole's initials, "G. W. C.", in his handwriting; he recognizes the handwriting in pencil appearing near the bottom of "that page", Com. Ex. 1582, as G. W. Cole's initials, "G. W. C.", in his handwriting; the witness recognizes the handwriting of the pencil notes appearing in the upper right corner of Com. Ex. 1579 as Mr. Cole's handwriting and initials; the witness recognizes the handwriting of the "penciled" appearing in the upper left hand corner, and the handwritten initials "G. W. C." near the center of "that

11598 page", Com. Ex. 1578, as being in G. W. Cole's handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." near the center of

"that page", Com. Ex. 1559, as Mr. Cole's initials in his handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." in the upper left corner of "that page", Com. Ex. 1542, as Mr. Cole's initials in his handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." appearing near the center of "that page", Com. Ex. 1541, as Mr. Cole's initials in his handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." appear-
11599 ing near the center of "that page", Com. Ex. 1527, as Mr. Cole's initials in his handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." appearing near the center of "that page", Com. Ex. 1522, as Mr. Cole's initials in his handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." appearing near the center of "that page", Com. Ex. 1521, as Mr. Cole's initials in his handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." appearing near the center of "that page", Com. Ex. 1526 as Mr. Cole's initials in his handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." appearing near the center of "that page", Com. Ex. 1517, as Mr. Cole's ini-
11600 tials in his handwriting; the witness recognizes the handwriting of the penciled initials "G. W. C." appearing near the right center margin of "that page", Com. Ex. 1513, as Mr. Cole's initials in his handwriting.

Mr. MacIntyre: I believe that completes the supplementary identification that we will attempt to give these documents through this particular witness.

Mr. Leisure: Your Honor, Counsel for the Commission has now just gone through the last 25 minutes with regard to all of these exhibits, 1506 to 1844, and examined them, and after selecting certain of them that he wanted to use, he has exhibited them to Your Honor and has questioned the witness about them.

We think that this procedure is improper. We object to it and move that all of the testimony be stricken out.

Trial Examiner Norwood: Well, I think that Coun misstates the thing when he says he questioned the witness about them, except that he identified certain marks thereon.

Mr. Leisure: Well, the record will show whether or

not he questioned them. If he didn't question him it will appear on the record.

11601 Trial Examiner Norwood: Yes; exactly what the questions were.

Mr. Leisure: And the record shows what I am referring to.

Trial Examiner Norwood: Yes.

Motion denied.

Mr. Leisure: May I ask the witness a question?

Trial Examiner Norwood: Certainly.

Cross Examination by Mr. Leisure.

Q. You identified certain signatures there as being that of Mr. Cole. Are you acquainted with the man in your office by the name of Thiem?

A. No.

Q. Is there a man in the employ of the company by the name of Thiem?

A. I—

Q. Who at one time signed Mr. Cole's signature?

A. I think there was.

Q. Are you able to tell the difference between Thiem's writing and Mr. Cole's writing?

A. I wouldn't be able to tell Mr. Thiem's writing. I don't recall it.

Mr. Leisure: That is all.

Mr. MacIntyre: That is all.

11603 Chicago, Illinois,
December 5, 1938.

11606 (COM. EX 1496-A, B and C, and 1497-A and B; were offered and received in evidence.)

11615 (COM. EX. 1502-A to F, and 1503-A to H were offered and received in evidence.)

11617 E. W. BLOM, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am the assistant administrative engineer of the Iowa State Highway Commission and have held that position since 1930. I have been connected with the Commission since 1929. Our chief work consists of the preparation of proposals, the opening of lettings and the recom-
11618 mendation of contracts and warrants to our Commission for all construction work and all materials which may be purchased for use in construction work.

11619 By Mr. Wooden:

Q. How large would you say the requirements of the Iowa State Highway Commission for cement have been over the period of your connection with it?

Mr. Leisure: I object to that, your Honor, it is immaterial to the issues, the total requirements of the State Highway Commission.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled. It goes to his experience.

A. The requirements have varied between 1,000,000 and 4,000,000 barrels, I believe.

By Mr. Wooden:

Q. What do you mean, per year?

A. Per year.

Q. What was the period of maximum requirement?

A. The year 1930.

Q. Were you accustomed at that time to ask for bids on cement for the Iowa Commission's road construction?

Mr. Leisure: Is this 1930 you are speaking of.

Mr. Wooden: Yes.

A. During 1929 we had purchased some cement and furnished it to contractors, and late in the year of 1929 we purchased 2,000,000 barrels of cement for use
11620 during 1930 construction season. I believe that that is the first major purchase that we made.

Q. Then in 1930 do I understand the purchases went up to 4,000,000 barrels?

A. We furnished cement on only part of our work in 1930. I don't have the figure on the total purchased, but it was something over 2,000,000 barrels.

Q. When was the 4,000,000 barrel purchase that you mentioned?

A. Well, the 4,000,000 barrels would be our total requirements, part of which was furnished by contractors, you understand.

Q. I see. And the remainder by direct purchase from the mills.

A. Right.

Q. Have the purchases direct from mills continued in any substantial degree in the last several years?

A. We discontinued the purchase of cement from the mills in 1933. I don't believe we have purchased any cement since that time.

Q. Since then it has been through contractors; is that the way it has been?

A. Yes.

Q. What was your custom while purchasing direct from the mills, to ask the mills to bid on a certain maxi-
11621 mum requirement, possible maximum requirement as you might need it?

A. We have followed both methods. We have advertised for individual projects asking for the requirements for that particular job, and on several occasions have made general purchases for a season's or part of a season's requirement.

Q. In purchasing in the latter way, does that involve mills agreeing to furnish up to a certain quantity, as you might want it? Or less, if you want less?

A. In general our policy has been to in these general

lettings of which we receive bids for a season's requirements to ask for bids on a certain definite quantity of cement. Then contracts were awarded to various cement companies for a certain definite number of barrels. The actual shipments, of course, might vary. Our state law permits our increasing the purchases under a con-
11622 tract by twenty per cent, and I believe in some cases we have exercised that option to the full twenty per cent.

11623 Q. You mean take 20 per cent less than the amount called for in the contract, is that it?

A. 20 per cent more.

Q. 20 per cent more?

A. Yes.

Q. I see. What did you have to do in the Commission with the handling of bids and the awarding of contracts resulting from bids on cement?

A. I make the tabulation of the bids as they are read and generally assist with the computations to find the low bidder and the preparation of the contracts for submission to the Commission.

The witness identified Com. Ex. 1846 A, B, and C as a tabulation of the bids received at a cement letting held on November 24, 1931. He had a part in preparing the tabulation, [having] made a rough copy for it. These papers are from the original records of the Iowa State
11624 Highway Commission. The first space that runs across the top from left to right contains the name of the bidder, such as Hawkeye or Missouri. That is supposed to be an abbreviation of the name of the bidder.

Mr. Wooden: I will offer this in evidence, your honor, as Commission's Exhibit 1846-A to C, inclusive.

11625 Q. Did you produce, Mr. Blom, the proposals and original bids which are tabulated in the papers you have just identified, Commission's Exhibit 1846-A to C?

A. Our record is complete on that. All of the proposals and all of the contracts awarded were in the folder.

Q. And they are in the folder which I have just handed over to the respondents?

A. They were when I brought them in.

Mr. Wooden: All right, sir, they should be there, then, although I have abstracted one which I propose to offer.

Now, if I may, this is so closely related, it coming from the same file here, I will have him identify this paper.

Mr. Zimmerman: Yes.

By Mr. Wooden:

Q. What is this paper marked Commission's Exhibit 1847-A to D, inclusive, for identification?

(Handing document to witness.)

A. The proposal of the Lone Star Cement Company of Kansas City, Missouri, submitted at our letting of
11626 November 24th, 1931.

Mr. Wooden: I will offer that, your honor. It constitutes a sample of the proposal.

Mr. Leisure: Of the proposal?

Mr. Wooden: Of the proposal and of the bid of the Lone Star Company.

Trial Examiner Norwood: Is that same matter covered by the abstract?

Mr. Wooden: Well, the abstract gives the figure, your honor, but it does not contain the language, of course, of the proposal or of the bid itself.

Trial Examiner Norwood: Well, I mean that proposal or bid is one that is contained in the abstract?

Mr. Wooden: Oh, yes, it is one of the bids.

Trial Examiner Norwood: Yes.

Mr. Leisure: When you say proposal, do you mean this is the invitation to bid?

Mr. Wooden: I think that is what I mean, if the witness will confirm or correct me.

Mr. Leisure: Was there some preceding invitation to this, I mean let's make sure.

Trial Examiner Norwood: This proposal there is the invitation to bid, isn't it?

11627 By Mr. Wooden:

Q. Well, 1847-A, what is that?

Trial Examiner Norwood: It contains the specification, does it?

A. I suppose the better designation would be "Contract documents." It contains the notice to bidders, supplemental specifications to our standard specifications, a form of contract, sample form of contract, and the proposal of the bidder.

Mr. Zimmerman: May I ask, Mr. Wooden, that is in the jargon of this proceeding referred to as an invitation?

Mr. Wooden: I would say it is. It starts off by saying: "Sealed bids will be received."

Mr. Zimmerman: Yes.

Mr. Wooden: And so on. It goes ahead to specify the terms and conditions. I don't know whether it uses the words "invite" or "invitation." I don't believe they do, but it is an invitation.

Mr. Leisure: May I ask a question about it?

Trial Examiner Norwood: Certainly.

Examination on Voir Dire by Mr. Leisure.

Q. I notice in the fourth column from the right, in Commission's Exhibit 1846-A a series of computa-
11628 tions. Do you know what it is?

Trial Examiner Norwood: In pencil?

Mr. Leisure: In pencil.

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Do you know whose handwriting it is or what it is or what it purports to show?

A. I am sorry. I don't know what that is.

Mr. Leisure: I assume that is not being offered, Mr. Wooden, the penciled notations (indicating).

Mr. Wooden: No, in other words, the witness can explain them or identify them in some way. Those are the pencil figures, I take it.

The Witness: I don't know what they represent.

Mr. Wooden: You don't know anything about those. All right.

By Mr. Leisure:

Q. And as to 1847-A, for identification, I am not clear as to whether or not that is the original invitation, or is this something that came after the original invitation; do you know?

A. Well, this is the original invitation.

Q. That is the first thing that went out on this particular project to the respective bidders?

A. Well, we perhaps had had a—well, we did
11629 have an official advertisement calling for bids and this was furnished to the bidders as a form upon which he must submit his bid.

Q. Now, is that original advertisement—has that been

included in this booklet which you have submitted here, which has not been marked for identification? If that here at the present time?

A. I don't believe that a copy of the official publication is there.

(The exhibits referred to were handed to Mr. Zimmerman.)

Mr. Zimmerman: Have you another copy of that abstract?

Mr. Wooden: Yes.

(Another paper writing was handed to Mr. Zimmerman.)

Mr. Wooden: Give this the next number.

(The said paper writing above referred to was thereupon marked for identification as "Commission's Exhibit 1848," purporting to be a letter to the Iowa State Highway Commission dated the 24th of November, 1931, from the Lone Star Cement Company over the purported signature of J. A. Lebanez.)

Mr. Zimmerman: Referring to this Commission's Exhibit 1846-A, if the Examiner please, I would like
11630 to ask the witness a question or two, so that I may be clearer on what its contents are.

Trial Examiner Norwood: Yes.

Examination on Voir Dire by Mr. Zimmerman.

Q. I notice, for example, that you have a column headed "U. N. PR." That means "Unit Price," I take it?

A. Yes.

Q. Underneath that you have listed various figures and those figures refer to the delivered price at the destination shown opposite the figure on the left? Perhaps it will be clearer—

A. I would like to see the exhibit, please.

Q. Yes. That happens to be the second page (indicating).

A. The figures appearing in the Unit Price column are the delivered price per barrel except as you will note at the bottom of the page a discount column in which certain discounts are to be deducted from those unit prices.

Q. Yes. That is the discount if paid within a certain time, I suppose, or a cash discount?

A. I presume. It doesn't say here.

Q. Now, under the column which is headed in printing on the left, "Item," and below that you will notice the names of "Spencer, Forest City, West Union," and so forth. Are those the destinations that are involved?

11631 A. Yes, those are the destinations at which we ask the bidders to quote delivered prices on cement.

Q. Then does the document purport to show your computation as to the low bidder?

A. No, there is nothing appearing here as to that, sir.

Q. Now, I note under the last column on this Commission's Exhibit 1846-A, it refers to Lehigh at Mason City, "A million barrels as required." Does that refer to some language that you found in the bid or does it refer to something in an invitation that you sent to Lehigh?

A. I think that we refer to the proposal.

(A paper writting is handed to the witness.)

A. These figures will appear there in blanks which were left for the bidder to fill in. For instance, we have 1,000,000 barrels as their limitation on a maximum award. They would not accept to exceed a million barrels. The next blank, which is filled in with the words "as required," is their answer to your question as to the maximum shipments per week.

Q. Oh, I see. And it doesn't appear—oh, I see. That refers to the limitation of the maximum amount that may be required in any one week?

A. Yes.

Mr. Zimmerman: All right, thank you.

Trial Examiner Norwood: Are there any objec-

11632 tions to the exhibits?

Mr. Leisure: No objections.

(COM. EX. 1846-A, B and C, and 1847-A, B, C and D were offered and received in evidence.)

By Mr. Wooden:

11633 Q. Mr. Blom, referring to Exhibit 1846-A, I note that the tabulation under the heading of "Marquette Company" shows prices, delivered prices at these various destinations which are uniformly, I believe, 10 cents a barrel below those of other bidders. Do you have any explanation to account for that uniform difference of 10 cents a barrel on the part of the Marquette Company?

A. That is explained, in the fact that their bid is a net bid, from which no discount is to be deducted, whereas I

believe, all of the other bidders at that letting allowed a 10 cent per barrel discount from the figures as recorded in the tabulation.

Q. Are you basing your answer there upon your examination of the bids themselves which accompanied the tabulation?

A. No, I am basing my answer on just the examination of that abstract.

Q. Well, the bids themselves are here for—

A. Yes, they will show.

Q. —checking against your statement just made?

A. Yes.

Q. Making that allowance of 10 cents for the cash discount, can you then say to what extent all the bids at all the destinations were identical in that case?

Mr. Leisure: I think the document speaks for it-
11634 self and anything the witness would say would be merely paraphrasing what was in it.

Trial Examiner Norwood: He may answer the question for our information. These little things will explain the index that we have and it would not be taken if the supporting data was to the contrary.

A. Well, a rather hasty examination indicates that the prices are not all alike, taking into account the 10 cent discount.

By Mr. Wooden:

Q. To what extent are they not alike?

A. Well, I find that the bid of the Lone Star Cement Company, that their quotation is for delivery at Fort Dodge, $1.32 per barrel, whereas all of the other bidders except the Medusa Cement Company bid $1.36 at this point.

Q. And Medusa, was it higher or lower than $1.36?

A. The Medusa at Fort Dodge was $1.45; higher.

Q. Was Medusa high at other points, other delivery points?

A. Medusa was higher at all other points except West Union and Washington.

Q. And what was it there by comparison with the other bidders at those points?

A. The same.

Q. In other words, Medusa was not low at any point, but at some points it was higher and the remaining points the same?

11635 A. That is right.

Q. Do you find that the only price lower than $1.36 at Fort Dodge was the Lone Star?

A. That is right. Of course, you will remember we are talking about $1.36, from which all of the companies except Marquette quoted a 10 cent discount.

Q. Making that allowance?

A. Right.

Q. So that they were all $1.36 except Lone Star?

A. That is right.

Q. Lone Star was $1.32?

A. That is right.

The witness identified Com. Ex. 1848 as a letter addressed to the Iowa State Highway Commission, signed by J. A. "Rehaney" of the Lone Star Cement Company. That letter was received by the Highway Commission and produced from its files here. The witness recognizes a pencil writing in the upper lefthand corner as appearing to be a pencil notation by "our" chief engineer, F. R.
11636 White. The witness can't swear that it is "his" handwriting. The witness knows nothing about the meaning of "that" pencil notation, beyond the knowledge that such a letter was filed shortly after the time for receipt of bids. He thinks that the pencil notation on the upper lefthand corner is a notation made by Mr. Wooden when "this" letter was presented to the Commission in their meeting room.

Mr. Wooden: I will offer Exhibit 1848, including the pencil notation, and with the statement that I believe there is already in the record a copy or possibly a duplicate of the letter, in which case I should want to ask or reserve the privilege of withdrawing the other letter, but this is the original communication itself received from the Lone Star Company.

11637 By Trial Examiner Norwood:

11638 Q. Can you straighten that out, as to when it was, as to who put the pencil marks on the paper? And under what circumstances? Tell us about it.

A. Well, I believe that my testimony is something like this, that I was unwilling to swear that that is Mr. White's handwriting. He writes a very unusual hand, and it looks very much like it. I believe I said that this—I thought that this was a notation made on the letter when it was brought into the Commission room on the day of the letting.

By Mr. Wooden:

Q. You mean the Iowa State Highway Commission's room?

A. Yes. Normally, such correspondence would go through our general office and be stamped with a stamp, and I presume that this letter was brought into the Commission room by a representative of the Cement Company and that Mr. White, in order to make a record of the time when the letter came in, which, of course, would be of some importance, made this pencil notation on it.

11639 By Trial Examiner Norwood:

Q. Well, do you know whether or not this document was received at the time indicated by the pencil notes?

A. I know that such a letter was received, although it didn't pass through my hands. I didn't see it.

Q. Prior to the letting?

A. No, this was subsequent to the time for receiving bids.

11640 (COM. EX. 1848 was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Blom, can you state how the award, if any, was made in the case, or in the bidding that is tabulated in Exhibits 1846-A to C?

A. Well, not without having access to the records.

Q. Are they here?

A. Yes.

(Certain paper writings were handed to the witness.)

The Witness: Now, what is the question?

The Reporter: (Reading) "Mr. Blom, can you

11641 state how the award, if any, was made in the case, or in the bidding that is tabulated in Exhibits 1846-A to C?"

A. Well, the following contracts were awarded at this letting: Universal Atlas Cement Company, 25,000 barrels—

Mr. Zimmerman: What are you reading from?

The Witness: From the original contracts. They have the notation of the awards on them.

Mr. Wooden: They are the contracts entered into after the awards were made.

The Witness: These are the contracts between the Highway Commission and the Cement Company.

Mr. Zimmerman: Oh, yes, I see.

A. (Continuing) Pennsylvania Dixie Cement Corporation, 200,000 barrels; the Ash Grove Lime & Portland Cement Company of Nebraska, 25,000 barrels; Lehigh Portland Cement Company, 75,000 barrels; Marquette Cement Manufacturing Company, 100,000 barrels; Northwestern States Portland Cement Company, 150,000 barrels; Hawkeye Portland Cement Company, 300,000 barrels; Dewey Portland Cement Company, 125,000 barrels.

By Mr. Wooden:

Q. Can you say what the practice of the Iowa State Highway Commission was in awarding contracts when the destination costs of the bidders were identical?

11643 The Witness: No. If there was, I probably wouldn't know about it because that is something over which we have very little control. We merely submit the bids to them and the Commission determines the awards. I wouldn't know what things they consider in making those awards.

Trial Examiner Norwood: Well, when they have identical bids, how do they decide who gets the award, do you know?

Mr. Zimmerman: He says he doesn't know.

The Witness: I don't know.

Trial Examiner Norwood: All right.

Mr. Wooden: Let me inquire this much about it:

By Mr. Wooden:

Q. How do you know whether or not it has been the practice in such cases of identical bidding—or do you know whether or not it has been the practice in such cases of identical bidding to make the awards by lot or not?

Mr. Zimmerman: I still object. This witness says he doesn't know.

Trial Examiner Norwood: He doesn't know. Objection sustained. And besides you have the contracts showing what they did in this particular case, giving—

11645 The witness identified Com. Ex. 1849 A, B and C as the official record of the bids received for furnishing cement at a letting held by the Iowa State Highway Commission on August 16, 1932. The witness had a part in the tabulation of the bids, [having] recorded the bids as they were read, and this tabulation was prepared from the rough copy thus made. He believes "that" to be an accurate summation of the original bids as received.

Mr. Wooden: I will offer for the record Commission's Exhibits 1849-A, B, and C, and leave it in the folder which contains, I believe, the original record consisting of the invitations and the bids themselves.

11646 Is that correct, Mr. Blom?

The Witness: I am not sure that that folder is complete. If I may examine it I can answer the question.

Trial Examiner Norwood: Examine it.

(The paper writings were handed to the witness.)

A. This folder contains the invitations, proposals, and all contracts awarded at the letting of August 16, 1932, with the exception of one bid which was not read.

By Mr. Wooden:

Q. Does it contain a record of all bids that were submitted?

A. Yes.

Q. Whose bid was not read?

A. That of the Lone Star Cement Company.

Q. Do you know why it was not read?

A. No, I do not.

Q. Is the Lone Star bid there?

A. No, their bi[illegible] is not there.

Examination on Voir Dire by Mr. Leisure.

The witness does not know anything about the pencilled notations in the first column on Com. Ex. 1849 A, or

11647 what they are intended to signify, or in whose handwriting they were made, or when they were made; a stamp marked "void" in the third column on the second page, Com. Ex. 1849 B. was placed there at the time this tabulation was typewritten, after the bids had been opened.

Trial Examiner Norwood: Any objections?

Mr. Leisure: We have no objections.

11648 By Mr. Wooden:

Q. These sheets here represent the invitation and the specifications in this particular transaction (indicating)?

11649 A. Those pages, yes.

Mr. Wooden: Very well.

Trial Examiner Norwood: If the sheets referred to are not numbered, let's mark them Commission's Exhibits 1850, for identification, A, B, C, and so forth.

The Witness: The file, what we call our file copy is in this folder somewhere.

By Mr. Wooden:

Q. Can you find it?

A. That is it right there (indicating).

Q. Yes, that is better.

A. That is our official record on it.

Trial Examiner Norwood: That is how many pages, 1850-A to what?

By Mr. Wooden:

Q. Six pages, is that right?

A. Six pages.

Trial Examiner Norwood: 1850-A to F.

(The documents referred to were marked "Commission's Exhibit 1850-A to F," inclusive, for identification.)

Mr. Wooden: I am offering, pursuant to Mr. Zimmerman's suggestion, Exhibits marked for identification 1850-A to F, which consist of the file copy of the additional notice to bidders and the specifications for the bidding of August 16th, 1932.

11650 Mr. Zimmerman: That is Exhibit 1850-A to F?

Mr. Wooden: Yes.

Trial Examiner Norwood: Any objection?

Trial Examiner Norwood: Commission's Exhibits 1849-A, B and C, and 1850-A to F, are received and will be so marked.

(COM. EX. 1849-A to C, and 1850-A to F were offered and received in evidence.)

Q. Mr. Blom, referring to Exhibit 1849-A, B and C, what do the figures represent that are opposite the left-hand, on the left hand side, "Maximum amount"?

A. We permitted the bidder to state in his proffer, the maximum amount of cement that he would be willing to sign a contract for.

Q. And the "maximum rate per week," what do the figures opposite that indicate?

A. Those figures represent the maximum shipment in barrels per week that the company would be willing to guarantee delivery on.

Q. And the figures opposite both those are what

11651 the companies themselves indicated their willingness to do?

A. Yes, those same fiures, you will find on checking, occur in the proposal.

Q. Did the Highway Commission offer any assurance or guarantee to the bidders that they would take any particular proportion of their maximum amount or maximum quantity bid at the time the bids were received?

A. Well, the only thing that we agreed to do was not to award them a contract for more than the amount, that limit that they had set.

Q. Under the terms of the invitation could you take as much less as you found you needed, less than the maximum quantity bid on?

A. We felt that we had the right to award the contract for any quantity that we saw fit.

Q. That did not exceed the maximum bid on?

A. Yes.

The witness identified Com. Ex. 1851 A to L in-
11652 clusive as an official abstract of the bids received at a letting for the furnishing of cement, held on December 5, 1929, by the Iowa State Highway Commission.

Mr. Wooden: I will offer that in evidence, your honor, with the same conditions regarding the previous offers.

Trial Examiner Norwood: The supporting data that is available?

Mr. Wooden: Yes, the supporting data available.

Mr. Leisure: And are you offering the invitation in this instance, Mr. Wooden?

Mr. Wooden: I had not intended to, but I am perfectly willing to, if anyone wants it.

Mr. Leisure: All of the bids are here, is that true, so that we may see them?

Mr. Wooden: I will ask the witness on that.

By Mr. Wooden:

Q. Are all the bids on which this last numbered exhibit is a tabulation, are they all here?

A. I brought them all in except the bid of the
11653 Lone Star Cement Company, which I was unable to find in our files.

Mr. Leisure: I take it, you offer this under our stipulation?

Mr. Wooden: Yes.

11654 Mr. Wooden: Well, I will offer at this time, your Honor, papers marked as Commission's Exhibits 1852-A to D, inclusive, if the witness will state that that is a duplicate of the form of invitation and the specifications

that were sent to all bidders in ths particular case involving the letting of December 5, 1929.

(The paper writings were handed to the witness.)

Mr. Zimmerman: Represented to the witness by the abstract, Commission's Exhibits 1851-A to L.

The Witness: This is 1852.

Mr. Zimmerman: Yes, sir.

Mr. Wooden: But the abstract was 1852.

Mr. Zimmerman: This is 1852, but the abstract is 1851-A to L.

11655 A. Well, except for the fact that this was a proposal that was furnished to one of the bidders, and, of course, contains his signature and certain other notations.

Trial Examiner Norwood: Yes.

The Witness: It is a sample.

By Mr. Wooden:

Q. That particular bidder was not a cement manufacturer, either, was it, a lumber company?

A. No.

(COM. EX. 1851-A to L, inclusive, and 1852-A, B, C and D were offered and received in evidence.)

11656 Mr. Wooden: I have no further questions to ask the witness, but I want to make this statement, that I should like to have the privilege of substituting photostatic copies of the papers which the witness has produced and which I have offered, and return the originals to the witness.

Trial Examiner Norwood: That refers to those invitations?

Mr. Zimmerman: And the abstracts?

Mr. Wooden: All the papers which have been offered.

Trial Examiner Norwood: That is agreeable is it?

11657 Mr. Zimmerman: To substitute photostats for the originals, yes.

Mr. Wooden: And I should like, if possible, to expedite the checking with the original papers which he has produced, which have not been offered, so that they too may be returned to him without delay, but that is up to the counsel for the other side.

Mr. Leisure: We will do it as fast as we can.

Trial Examiner Norwood: The counsel will have to

keep them a couple of days, I assume, and the witness will leave me his address and I will be responsible for them.

The Witness: Well, that is perfectly all right.

11668 *Cross-Examination by Mr. Leisure:*

Q. Mr. Blom, on this Exhibit 1846-A, the tabulation, what were the different companies that were bidding on there?

A. The Hawkeye Cement Company of Des Moines; Missouri, I am unable to give the full complete name here. If you wish that, I can take it from the proposals themselves. These are all abbreviated here.

Q. Well, that is all right. I think we are familiar with the abbreviations, Mr. Blom.

A. (continuing) Northwestern States Portland Cement Company of Mason City; the Marquetté Cement Company of Chicago; Lehigh Portland Cement Company of Mason City; Pennsylvania-Dixie Cement Company of Des Moines; the Ash Grove Cement Company of Omaha; Dewey Portland Cement Company of Davenport; Lone Star Cement Company of Kansas City; Universal
11659 Cement Company of Des Moines; the Alpha Cement Company of Chicago; and the Medusa Cement Company of Cleveland.

Q. What was the date of that letting?

A. That is the letting of November 24th, 1931.

Q. I think you told us this morning that the prices were not all alike when you took into consideration the 10 per cent discount?

A. That is right.

Q. Now, there were certain terms and conditions that certain companies specified. For instance, I show you letter of the Lone Star Company, dated November 21st, 1931, addressed to the Iowa State Highway Commission, in which the Lone Star Company states that:

"In accordance with your invitation, as contained in your notice to the bidders, dated November 10th, we are enclosing proposal for furnishing one million barrels of Lone Star cement for use in your road program during the year 1932, and that we are enclosing in accordance with your requirements a certified check for $5,000.00 in payment of the commission. Enclosed also please find a separate document setting forth certain terms of sale."

And they also say:

"All invoices dated from the first day of the
11660 month to the 15th day of the month, inclusive, must be paid on the 22nd of the month, and all invoices dated 16th to 31st, inclusive, must be paid on the 7th day of the following month, and under these conditions the regular cash discount will be allowed."

Those provisions which I have just referred to and which are contained in that letter to your Commission were some of the terms and conditions specified at the time by the Lone Star Company, were they not, Mr. Blom?
11661 A. I believe this letter was attached to their proposal and considered a part thereof.

Q. And this is the enclosure, is it not, that was referred to in the letter?

A. Yes.

Mr. Leisure: I ask to have marked, for identification, a letter purporting to be dated November 21, 1931.

Trial Examiner Norwood: Respondents' Exhibit 49.

Mr. Leisure: From the Lone Star Company to the Iowa State Highway Commission.

(The letter above referred to was thereupon marked for identification as Respondents' Exhibit 49.)

Mr. Leisure: And also an enclosure referred to in the same letter.

(The letter above referred to was thereupon marked for identification as Respondents' Exhibit 50.)

Mr. Leisure: I would like to offer those in evidence.

Trial Examiner Norwood: That is 49 and 50, Respondents'.

By Mr. Leisure:

Q. The companies specified different terms and conditions?

A. Yes, they seem to make a practice of inserting certain terms and conditions.

11662 Mr. MacIntyre: If your Honor please, we object to the witness testifying as to what different terms and conditions were placed in their bids unless we have evidence as to what terms and conditions were laid down by each of those bidders at the time these bids were placed. This witness has stated that he cannot recall as to those details unless he does have the papers before him.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: And if Mr. Leisure is attempting to

contend at this time that the other bidders in this instance had different terms and conditions, different terms and conditions than the Lone Star Company, then we serve notice on him at this time to produce their statement of their terms and conditions of sale as they submitted them to the Iowa Commission.

Trial Examiner Norwood: That point is well taken,—counsel's point is well taken.

Mr. Leisure: Your Honor, this only modifies the bid which was put in this morning by the Federal Trade Commission, and I am pointing out what the modification is.

Trial Examiner Norwood: You may introduce the modification, and in that case those two letters there are the modifications themselves, but I understand that you

11663 are asking him for other modifications.

Mr. Leisure: I am following the practice that has been followed by the Commission from the very beginning of these hearings, asking general questions of his knowledge on a specific subject. I am not varying from the practice that has been followed regularly by the Commission.

Trial Examiner Norwood: Read the question.

(Question and answer read.)

Mr. MacIntyre: Now, unless the witness is able in this instance to definitely state of his own knowledge whether or not the companies bidding in this particular instance did make different terms and conditions of sale, we ask that his answer to that question be stricken from the record. If he can state of his own knowledge without reference to documents, of course, we have no objection.

Trial examiner Norwood: Motion denied.

Have you any objections to the exhibits?

Mr. Wooden: Your Honor, I have no objection to the exhibits at such. It is Mr. MacIntyre's point and one which I have which I wish to emphasize, and that is, we want the terms of sale for the other bidders.

Trial Examiner Norwood: Yes.

Mr. Wooden: And if they are here, why, we will

11664 use them; if they are not, why, we would like to have them.

Trial Examiner Norwood: So far as I understand it, this last statement here refers to those two letters.

Mr. Leisure: Mr. Wooden has them all here.

Trial Examiner Norwood: The exhibits are received as Respondents' Exhibits 49 and 50.

(RESPONDENTS' EXHIBITS 49 and 50 were offered and received in evidence.)

Trial Examiner Norwood: I shall exclude any information regarding the others, if they are not in evidence.

Mr. Leisure: Witnesses have from the beginning of these hearings testified to specific instances, and then they have given their knowledge on general subjects. I see no reason why we should have any exception made in this instance. The witness' answer is perfectly clear. He knows what he is talking about. The question is within the terms of the subject matter discussed. I don't really understand the force of the objection at all.

Mr. MacIntyre: If your Honor please, it is just to this point—

11665 Mr. Wooden: When you have documents on the point, aren't they the best evidence rather than some general statement?

Mr. MacIntyre: Our objection went to this point, that the other bidders have not produced in writing to the Iowa State Commission their definite terms and conditions of sale as did the Lone Star Company here.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: And if they had anything difference than those of the Lone Star Company—

Trial Examiner Norwood: Yes.

Mr. MacIntyre: —then we ask Mr. Leisure to produce them here so that we may know whether or not they are in these documents that have been produced by this witness.

Trial Examiner Norwood: Yes. I think the counsel is right about that, but I simply permitted him to answer that last general statement there as introductory to the introduction of the papers, if he has them, but I shall not let any further information come out on those.

11668 By Mr. Leisure:

Q. Now, as to the proposal of August 16, 1932, may I have that, please?

(A paper writing was handed to Mr. Leisure.)

By Mr. Leisure:

Q. Mr. Blom, I notice a statement here in pencil which says: "Letters accompanying proposal of the bidders who were awarded contracts, August 16, 1932, letting."

Are there any of them—

Mr. Leisure: That should read "who were not awarded contracts, August 16, 1932," Mr. Reporter.

By Mr. Leisure:

Q. Do I understand in this folder you segregated those that were awarded from those which were not? Is that what these two slips indicate?

A. That is correct. It happened in one of the other
11669 folders, that these particular letters were filed right with the proposal, and they were loose, so just to keep the thing on the same basis, I separated those.

Q. So we may rely on it that those under this heading here were awarded contracts; is that true? (Indicating)

A. Yes.

Q. Thank you.

Now, in that instance, Mr. Blom, who were the bidders, if you please? I will just give you the folder (indicating).

A. You want the names of all of the bidders?

Q. Yes. There aren't many there, are there?

A. Well, I am not sure that I understand the question. You want all of the bidders who submitted bids at this letting?

Q. Yes. I want to find out who the successful bidders were, and, first, I wanted to get who all the bidders were.

11671 A. The bidders who filed bids at the letting of August 16th, 1932, are Pennsylvania-Dixie Cement Company, Hawkeye Portland Cement Company, Marquette Cement Company, Dewey Portland Cement Company, Lehigh Portland Cement ompany, Ash Grove Cement Company, Nebraska Cement Company, Universal Atlas Cement Company, Northwestern Portland Cement Company, Monarch Cement Company, Missouri Cement Company, Medusa Cement Company and the Alpha Cement Company.

By Mr. Leisure:

Q. Now, what about Lone Star?

A. Well, apparently they had submitted a bid and for some reason that was not opened and read. I am unable to tell you why.

Q. But they were one of the first bidders, is that not true, and when you carry a list of the bidders, their name should be included?

A. Yes, I believe that is true.

Q. That is correct. Now, refreshing your memory from

your records there, will you tell the Examiner what bidders were successful?

A. Contracts were awarded to the Dewey Portland Cement Company, Hawkeye Portland Cement Company, Marquette Cement Company, Universal Atlas Cement Company, Pennsylvania-Dixie Cement Company, Lehigh Portland Cement Company, Ash Grove Cement Company, Northwestern States Portland Cement Com-
11672 pany, Alpha Portland Cement Company. That is all.

Q. And you have been referring now to the letting of August 16th, 1932?

A. That is right.

11676 By Mr. Zimmerman:

Q. Now, the destination cost was the determining factor in every instance where you let a contract was it not? I mean by that the cost laid down at the destination?

A. That is the basis on which we received bids.

Q. I note that in your invitation you asked only for delivered prices, that is, showing what the cost of the commodity would be at the point of use or destination.
11677 Why did you do that?

A. Well, that is about the only way that we could give any consideration to the bids received, is to take bids delivered at some definite point. If we merely took bids at manufacturer's point of shipping, we would have to determine the freight rates, and it would be quite a complicated thing to determine what the bids actually were.

Q. You had found from your experience then that that was most advantageous to the State, as a buyer, to ask for delivered prices which would show exactly what the cement would cost at the destination or point of use?

A. Yes, that is right.

Q. I notice also that you make a provision in your invitation which requires the seller to prepay freight. Was that provision put in there because your experience had taught you that that was most advantageous to the State?

A. I don't know why that provision is in there. If we are buying cement delivered—

Q. Well, you didn't want to be troubled by paying out anything in advance until you paid your bill?

A. Well, our method of payment, of course, doesn't suit the railroads very well, because they have to sign a

vouchers and there is a considerable delay in the time element there.

Q. I see.

A. (continuing) It is always preferable for
11678 freight to be prepaid.

11679 Q. I notice also that you put in there, in paragraph 8 of your specifications, what you term protection against price decline, in which you say that "should there be a decline in the price of cement between the time the contracts are awarded and the shipments are actually made, the State will get the full advantage of such decline."

By that you meant that if there should be a decline in the market price of cement at any specific destination, the State was in no case to be required to pay more than the general market at that destination?

A. That is right.

11680 Q. Thus you were securing for the state a wholesale price, that is, exactly what the dealer at any destination would pay at any time before delivery of this cement up to the time of delivery and getting the benefit of whatever price they had?

A. That is correct.

Q. But if the price should advance at that destination, still the state would be protected by the contract?

A. That is right.

Q. So on that basis it didn't really make very much difference whether the bids that you received were identical or not. You were always sure of getting the very lowest market price at the destination; is that not so?

A. Yes, we could take advantage of any decline in price that we could prove to be a quoted market price.

11681 Q. And you provide that if freight rates are changed, that is, either increased or decreased as between any shipping point and any specific destination covered by the contract, that the contract price will be varied accordingly, that is delivered price will be varied accordingly?

A. Yes.

Q. That protects both parties to the contract, so that they simply recognize that the cost of transportation being an essential element is protected as against increase or decrease?

A. That is right.

11683 Q. Now, since 1933 contractors have continued to bid on state jobs in which cement has been used in Iowa?

11684 A. Yes.

Q. But the policy has been for the contractors to furnish their own cement?

A. Yes.

Redirect Examination by Mr. Wooden.

Q. Now, referring, Mr. Blom, to Commission's Exhibit 1846-A, B and C, I gather that there were ten destination points there for which you wanted bids and for which you received bids; is that right?

A. Yes.

Q. Were you to use all that cement right at those points, or were you expected to transport some of it to other points for use at other points?

A. As a matter of fact, these were at—these were arbitrarily selected points which gave us shipping points located at, in general—in the areas where we expected to use the cement.

Q. Do you mean that you expected to transport some of it from some of those points to other points for use?

A. We expected at the time we placed our actual orders for the cement to ask that it be delivered at other points.

11685 Q. Did you know at the time that you asked for delivery at other points just what the destination point would be at all those points, or did you have to figure that out yourself, or did the companies figure it out for you?

A. Well, those that had to be determined on the basis of difference in freight rates, of course, we had access to the tariffs.

Q. By whom? Who determined it?

A. Well, the cement companies, of course, invoiced the cement. We checked them against our freight tariffs to determine whether the proper adjustment had been made on the freight charges.

11686 Q. What source of information did you have in your own checking or calculation of freight rates?

A. Well, in checking the freight rates, we just—we used the tariffs issued by one of the bureaus here in Chicago.

Q. You mean the Freight Rate Bureau of the Cement Institute?

A. No; it is a freight tariff as issued by the railroads, through some agent.

Q. Did you ever make any use of the freight rate books put out under the auspices of the Cement Institute in checking the freight rates?

A. No, I don't believe so.

Q. Do you ever recall seeing such freight rate books?

A. No.

11690 Trial Examiner Norwood: Did you make any reference to a basing point mill in figuring the freight?

The Witness: In my testimony here did I mention basing point mill? Is that the question, your Honor?

Trial Examiner Norwood: No. I asked you—

Mr. Wooden: Yes. That is part of the question.

Trial Examiner Norwood: I asked you if you did make any reference to the basing points in figuring these prices and freight. Did you?

The Witness: I don't know what we called it. We had to determine the point from which—on which the quoted price was based.

Trial Examiner Norwood: Yes.

The Witness: And then by making the proper adjustment in freight determine what price we should pay at the point that the cement was actually delivered.

Trial Examiner Norwood: Yes.

Mr. Wooden: Well, that is all right. We just come back to where we were before.

By Mr. Wooden:

Q. Now, I want to determine—to find out how you determined which was the base on which the prices were quoted, the delivered prices as quoted?

A. We did that in two ways. We had more or less common knowledge that certain areas of the state were

11691 priced—the market price was determined on the basis of the price at a certain mill plus the freight to the delivery point.

Q. From that mill?

A. Yes. And we checked with our freight tariff to determine whether that was true.

Q. What mill points did you find checked out as base points?

A. For the most of Iowa Mason City mills seemed to be the controlling point.

Q. Do you mean to say that the destination price figured on Mason City basis checked out in these cases with an identical delivered price from mills that were located outside of the state of Iowa?

A. Well, when the quotations from all of the companies were the same or approximately the same, that was apparent.

Q. In other words, the mills with a higher freight rate by reason of their being located outside the state and at a much greater distance checked in at the same delivered—

A. They offered to furnish—

Q. —price as the Mason City price?

A. They offered to furnish the cement on the same price.

11692 Q. Now, Mr. Zimmerman asked you whether or not the cost of transportation wasn't an essential element in determining the delivered cost or the delivered price. I believe you agreed that it was.

In making your answer did you take into account that the cost of transportation from the various mills that bid was widely different from each other?

A. No, we considered only the delivered price.

Q. But when you say that the cost of transportation is an essential element, the cost of transportation is a variable element, isn't it depending from where you ship it from and to where you ship?

Mr. Leisure: Now, that is merely argumentative.

A. It is to some; it is not to us.

11694 Now, answer the question.

A. Well, my answer to this question was that we considered the delivered price in making the award, and that the price—the cost of transportation was not an element so far as we were concerned.

11696 By Mr. Wooden:

Q. Mr. Zimmerman was asking you certain questions about the guarantee against decline provision of your invitations.

A. Yes, sir.

Q. And I believe you said that that gave you the benefit of the same wholesale price that the dealer got at the same point, and that if that price should decline, you would get the same benefit the dealer would, is that right?

A. That is right.

11700 Q. Mr. Blom, what are the papers which I hand you in the folder marked, for identification, as Commission's Exhibit 1853-A to CCCC?

A. These are the proposals received on the letting held on November 24th, 1931, together with the contracts awarded following that letting.

Q. All of the papers and the correspondence in that folder relate to that particular letting?

11701 A. Yes.

Trial Examiner Norwood: 1853-A to CCCC has 11702 been offered. Is there any objection? Wait a minute.

Mr. Leisure: Are all of the bids in this folder? That is what I want to know.

The Witness: They were, when I brought them in.

Mr. Leisure: That is all right, if they were, when you brought them in.

Trial Examiner Norwood: Yes.

Trial Examiner Norwood: Any objection to the proffer of the exhibits?

(No response.)

Trial Examiner Norwood: The exhibits are received.

(COM. EX. 1853-A to CCCC was offered and received in evidence.)

11703 By Mr. Wooden:

Q. Now, I hand you a folder marked "Commission's Exhibit 1854-A to ZZZZ, inclusive, and will you state what it contains?

A. This folder contains the proposals received for furnishing cement in our letting of August 16, 1932, with the exception of the bid of the Lone Star Cement Company. It contains as well a tabulation of the bids received.

Q. Well, that is already in evidence, as Commission's Exhibit 1849-A, B and C.

Does this folder also contain the contracts that were entered into as a result of that bidding?

A. Yes.

11704 Trial Examiner Norwood: Are there any objections?

Mr. Zimmerman: No.

(COM. EX 1854-A to ZZZZ was offered and received in evidence.)

Q. Now, I hand you a folder marked as Commission's

Exhibit 1855-A to VVV for identification. What does that consist of?

A. This folder contains the proposals that were received in our cement letting held on December 5th, 1929, with the exception of the proposal submitted by the Lone Star Cement Company, the contracts that were awarded at that letting.

(COM. EX. 1855-A to VVV was offered and received in evidence.)

11705 Q. Referring to Commission's Exhibits 1852-A, Mr. Blom, I direct your attention there to a paragraph that relates to freight basing points. Did you have that in mind in your testimony regarding the calculation of freight to ascertain the proper relation between different destination places?

A. I didn't know that this paragraph was here at the time I answered the previous question (indicating).

Q. Mr. Blom, will you supply in a letter addressed to the Examiner the name of the freight bureau in Chicago that you referred to as publishing the freight books that you used in calculating the differences in delivered prices?

A. Yes. I will be glad to do that. I am familiar with the number of it but I am not certain as to the name of the agent.

Q. Well, I mean, when you go back to your home.

A. Yes.

Q. Will you look that up and communicate with the Examiner regarding it?

A. Yes.

Trial Examiner Norwood: Now, there is one thing in connection with the exhibits that were received here. The witness has stated that this is the official files of the state of Iowa, and I think it has generally been agreed that photostatic copies may be substituted for the
11706 originals, so that the originals may be returned. Is that understood generally?

Mr. Wooden: Yes. That is our understanding.

Trial Examiner Norwood: It may take a few days longer to send those back to you, but they will be photostated and returned to your files.

The Witness: All right.

11707 *Recross Examination by Mr. Zimmerman.*

11718 Q. Well, just what do you mean by "basing points" is what I am trying to develop.

A. We mean the point upon which the market price of the cement at any delivery point is apparently determined.

Q. How would you be able to tell what the basing point is, if you didn't mean the shipping point, so as to know just what freight to allow?

A. Well, if we take this particular letting that we are discussing, there are some twenty-five or thirty—

(continuing)—thirty or so different delivery points specified, and if we find that by deducting the freight to one of the shipping points, one of the mills gives a common price.

By Mr. Zimmerman:

11719 Q. What do you mean by "common price"?

Trial Examiner Norwood: Let him finish his answer.

A. I mean then if we deduct from the prices quoted the freight from one of these mills, the remainder is the same.

By Mr. Zimmerman:

Q. The same as what?

A. I mean that the price at the mill is the same.

By Trial Examiner Norwood:

Q. The same for all the bidders?

A. No, but we can find one certain mill here who is bidding on our requirements, that the price he bids apparently is determined on a price at his mill plus freight to the destination that we specify, and we are unable to do that in the case of other bidders.

By Mr. Zimmerman:

Q. Well, how did you find out what the prices at his mill were, that you refer to?

A. Well, if we take our delivered price and deduct what we know to be the freight.

Q. You could do that for every single bidder, couldn't you?

A. That is right.

11720 Q. So you would know what the price, as you put it, that the mill set by taking the delivered prices and deducting the freight which you would get at from the tariffs?

A. That is right.

Q. How would you be able to tell which one of those points was what you call a basing point?

A. The one at which a number or perhaps all of the points to which we asked for delivery, which his price at the mill would be—

Q. The same for all the delivery points?

A. That is right.

Q. Wouldn't that be true for more than one?

A. Not ordinarily.

Q. Well, it does sometimes happen?

A. Well, if there were two bidders bidding from the same town. If, for instance, if at Mason City if Northwestern States and Lehigh were both bidding, why, that would be true.

WILLIAM D. VOGEL, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Paulson.

My present occupation is highway contractor in Indianapolis, Indiana, and I have been so engaged for 16 years. My business is not exclusively that of highway contracts, but that is all the contracting work I do, highway and city work. I purchase cement in connection with my work in quantities of about 100,000 barrels a year. I now buy cement direct from manufacturers.

11724 Mr. Paulson: Q. What cement companies operate in your trade territory?

11725 A. Oh, the Lone Star, and Universal, Marquette, Wabash, Medusa, Speeds, Cosmos, Wolverine. I suppose there might be some more, but that is about all, I think.

11730 *Cross Examination by Mr. Leisure.*

Q. Mr. Vogel, on a number of these purchases, you mentioned that at various places there were identical prices quoted to you; is that correct?

A. I believe so.

Q. Yes. And those in each instance were what you

understood to be the prevailing market price at the time and place?

11731 A. Yes.

Q. Would you have been willing at any one of those places to have paid any more for one brand of cement than you would for another brand of cement?

A. No, sir.

Q. And you were speaking of delivered prices?

A. Of delivered prices, yes, sir.

Q. Have you ever attempted to buy f.o.b. mill?

A. No, that don't interest me.

Q. Why?

A. Why, it is what it costs me where I can use it.

Q. That is what you are interested in?

A. Yes, sir.

Q. That is the way you prefer to have it; is that so?

A. Well, personally, yes, sir.

Mr. Leisure: That is all.

Mr. Zimmerman: Just a question or two, please.

By Mr. Zimmerman:

Q. The reason why you prefer it is because if you didn't have a delivered price, would you not be required to maintain a traffic or freight department of your own?

A. Yes, sir.

Q. And that would greatly add to the expense of your business, wouldn't it?

A. Some, yes, sir.

11732 Q. Now, your purpose in getting these prices is in order that you may know what it costs to make concrete that goes into your job, so many cubic yards of it in a job, and you must know definitely what it costs to lay the cement down at the point where you mix your concrete, isn't that so?

A. Yes, sir.

Redirect Examination by Mr. Wooden.

Q. Mr. Vogel, I understand you are interested, of course, in getting the lowest delivered cost at any particular point where you want to use the cement?

A. Yes, sir.

Q. If you could get a lowered delivered cost by getting a price at the mill that was nearby to the place, wouldn't you be interested in an F. O. B. mill price?

A. Why, sure.

11734 Chicago, Illinois,
December 6, 1938.

11735 WILLIAM H. FOLEY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am an employee of the State Highway Commission of Indiana, at the present time in the capacity of
11736 auditor of the Purchasing Department. I have been connected with the Commission since August 1, 1931.

Q. Prior to your becoming auditor, what was the nature of your employment there?

A. Prior to that I worked as assistant to the assistant purchasing agaent, who was in charge of special purchases, and my duty at that time was to handle the cement, that is, the accounting part of it, the checking of invoices, and so on, and the payment of the bills.

Q. Have you had to do at any time during your employment there with the analyzing or tabulation of cement bids?

A. I made the rough draft of the tabulation while the bids were read, and supervised the transcribing of this tabulation.

Q. During what period did you do that?

A. Commencing in--the bids in December, '31, on up until they discontinued the practice of securing annual bids.

Q. When was that practice discontinued?

A. After the bid submitted March 23, 1933.

Q. Do I understand, then, that since the bidding of March 23, 1933, the State Highway Commission of Indiana has not sought to buy direct from mills?

A. Yes, sir.

Q. They have not?

A. They have not.

11737 Q. Since that time, in general, what is the method of purchase or the method of acquiring cement for highway purposes?

A. The cement is purchased by the contractor in construction work, and for maintenance purposes cement has been purchased in small quantities from dealers.

Q. Do you have with you the papers relating to the

bids and lettings on Indiana Highway Commission requirements over a period of years?

A. Yes, I brought with me—I took them from the official file, the complete set of bids, tabulations, and certified copies of the minutes of the Commission meetings in some cases rejecting and in other cases awarding contracts for the year of '29, commencing—for the supply for the year of '29, and '30, and '32 and '33.

Q. Where are those papers? Are they here?

A. I have them right there (indicating).

11738 Mr. Wooden: Will you mark that with the next number, please?

(The tabulation referred to was marked "Commission's Exhibit 1856", for identification.)

By Mr. Wooden:

Q. Showing you, Mr. Foley, a paper marked Commission's Exhibit, for identification, 1856, will you tell us what that is?

A. This is the official tabulation of cement prices submitted on the State Highway Commission's proposal, the bids for which were opened December 22nd, 1932, for furnishing the cement for the State Highway Commission's requirements for the year 1933.

Q. And what were those requirements in number of barrels?

A. I am not able to say the exact amount; that is contained in the first portion of the proposal. Something like 1,800,000 barrels.

Q. Would the proposals of the various companies show that?

(Handing documents to witness)

A. The proposals of each company show the maximum quantity that they would be willing to furnish at the price.

Q. I see.

A. 1,400,000.

Q. Is that the entire quantity?

A. That is the entire quantity and 20,000 bar-

11739 rels of high early strength.

Q. This paper you have identified, marked Exhibit 1856, did you produce that here in an envelope or a folder?

A. I brought that in a folder.

Q. Along with the proposals of the various bidders?

A. Yes, sir.

Mr. Wooden: Your honor, I will offer that in evidence for the record and proffer for checking purposes the bids themselves which the witness has produced along with it.

I might say further that I have what I believe to be a duplicate of the document which the witness has identified, and would suggest that this be substituted for the original, if the witness says it is a duplicate. (Handing document to witness)

By Trial Examiner Norwood:

Q. That is just one of the same run of blue prints, isn't it?

A. It is exactly. It is an exact duplicate.

11742 By Mr. Wooden:

Q. Can you tell us what the paper I show you, marked Commission's Exhibit 1857, is?

Trial Examiner Norwood: Wait a minute. Are there any objections to the proffer?

Mr. Leisure: Subject to the check.

(COM. EX. 1856 was offered and received in evidence.)

A. This is a blueprint of the tabulation of cement prices submitted on the State Highway Commission of Indiana's proposal, the bids being opened March 23d, 1933, to supply the requirements for the year 1933.

By Mr. Wooden:

Q. Is that paper a duplicate of the official abstract which you produced here this morning along with the proposals?

A. Yes.

Mr. Zimmerman: Off the record, please Mr. Wooden.

Trial Examiner Norwood: Yes, off the record.

11743 (A discussion ensued off the record.)

A. Yes, this is an exact copy.

By Mr. Wooden:

Q. Of the official copy which you have?

A. Of the one taken out of the files.

Mr. Wooden: I will offer, your honor, this duplicate which the witness has identified as a duplicate of the official copy. It has been marked 1857, for identification, and I proffer for checking purposes, as before, the original bids and proposals of the various companies from which I understand the abstract is drawn.

By Mr. Wooden:

Q. Is that correct?

A. It is taken from those bids, yes, sir.

Arial Examiner Norwood: Any objection?

11744 Mr. Leisure: Subject to checking, we have no objection.

(COM. EX. 1857 was offered and received in evidence.)

Q. Mr. Foley, can you explain why there appear to have been two biddings for the 1933 requirements?

A. The State Highway Commission rejected the first bids, that is, those received in December and readvertised for the same quantity, and the second tabulation is for the second bidding. I can't tell you the reasons that caused the highway commission to do that.

Q. The reason why they rejected the first set of bids?

A. No, I don't.

Q. Were contracts awarded on the basis of the second bidding?

A. Contracts were awarded to supply the cement for contracts already let under the plan of providing cement. When the contracts already let were completed, the plan of purchasing cement was discontinued.

Q. Can you tell us how the contracts were awarded, that is, as to quantity allotted to each bidder?

11745 A. No, I don't know how they allocated the amounts.

Q. Well, I mean not how, but in what quantities. Do you have a record of that showing how much was awarded to different companies?

A. Yes, I have there the minutes of the Commission meeting making the awards. That sets out the quantities awarded each company.

Q. Is that in the—

A. Yes, that is it (indicating).

Q. Do you have the minutes in your hand now that you refer to?

A. I have the minutes. These are certified extracts from minutes, that portion of the minutes covering the action on the cement bids.

Q. Will you tell us what awards were made to the various bidders and the quantities?

Mr. Zimmerman: First of all, may we not see the instruments themselves before he reads from them?

Trial Examiner Norwood: Yes.

The Witness: Do you want all of these?

Mr. Wooden: I didn't expect him to read from them exactly.

Mr. Leisure: Are you going to offer them, Mr. Wooden?

Mr. Wooden: I didn't intend to, no. I don't
11746 think it is necessary.

The Witness: These are the ones providing for '33.

11747 Trial Examiner Norwood: Well, we have had testimony here showing how the government decided these bids, and it has been given in evidence as part of these transactions. You have the bids there. You have the prices. I think that he might very well tell us how the awards were made. There is testimony as to their making the awards.

I shall overrule that objection. But these minutes, did you make those minutes?

The Witness: No, sir. They are certified by the chairman of the Highway Commission at the present time.

Trial Examiner Norwood: Yes.

The Witness: Taken from the minutes at that time.

Trial Examiner Norwood: He certified it as a true copy from the minutes.

The Witness: True copy, that is right.

11749 Trial Examiner Norwood: You offer this in evidence now?

Mr. Wooden: I haven't as yet, your Honor. I showed it to the witness. He has stated what it is, and I am asking him to state the number of barrels that were awarded to the different bidders.

Mr. Leisure: In other words—

Mr. Wooden: Based on t hat.

Mr. Leisure: In other words, counsel was asking him to look at a paper that he didn't prepare and had nothing to do with at the time it was prepared, and asking him to read from it into the record. If that can be done, then it will not be necessary for him to offer it in evidence.

Trial Examiner Norwood: I think you will have to offer this.

Mr. Wooden: All right, then, I will offer it.

11750 Trial Examiner Norwood: 1858 is that or not?

The Reporter: Yes.

(The document above referred to was thereupon marked for identification as Commission's Exhibits 1858-A and B.)

Mr. Wooden: If counsel forces us to offer it.

Mr. Leisure: We are not forcing you to do anything. We would like to see the full minutes if you are going to offer excerpts from them.

By Mr. Wooden:

Q. Mr. Foley, can you tell us whether or not these excerpts from the minut : which have now been marked as Commission's Exhibits 1858-A and B contain everything from the minutes that relate to cement?

A. Yes, sir; that is the full action on cement. The balance of the minutes of that meeting pertain to other things.

11751 (COM. EX 1858-A and B was offered and received in evidence.)

Mr. Leisure: I don't think Mr. Zimmerman has had a chance to see them yet.

Mr. Zimmerman: Yes, I have seen the minutes. Thank you, Mr. Leisure.

By Mr. Wooden:

Q. Mr. Foley, was it or was it not a practice during this period, when the State was getting bids direct from mills on cement, to ask them to state in their proposals or bids the maximum quantity which they would undertake to furnish if a contract were awarded them?

A. Yes.

Q. Under that provision, can you state what maximum quantities various bidders did undertake to furnish?

Mr. Zimmerman: I think we ought to have the documents themselves here rather than the witness'

11752 characterization.

Mr. Wooden: All right, they are here.

Mr. Zimmerman: Now, if the documents themselves are to be put in evidence—

Trial Examiner Norwood: Well, doesn't the abstract show that?

The Witness: The abstract shows that information.

Trial Examiner Norwood: Yes. Well, it is already in evidence.

Mr. Wooden: That is all right.

Mr. Zimmerman: That is all there is to that.

The Witness: You will find tha on the bottom of the page.

By Mr. Wooden:

Q. Do you mean the column at the bottom which is

headed "Amount of Proposal" on Commission's Exhibits 1856 and 1857?

A. Yes, those amounts are the amounts shown by the cement companies in their proposals as the quantity, the maximum quantity they bid on.

11755 The witness identified Com. Ex. 1859 A to CC as a copy of the proposal of the State Highway Commission of Indiana, giving notice that bids would be accepted on March 23rd for 1,400,000 barrels of cement, for the use of the State Highway Commission during the year 1933. It contains the full terms and specifications on which the bids would be submitted.

Mr. Wooden: I will offer that, your honor.

Trial Examiner Norwood: That is marked what?

The Reporter: 1859-A to CC.

Mr. Leisure: No objection.

By Mr. Wooden:

Q. Mr. Foley, referring to the 1933 bidding, do you know anything about the situation in that bidding

11756 where the Louisville Cement Company bid low in the upper part of the State in the vicinity of Valparaiso?

A. Yes.

11757 Q. Were you present, Mr. Foley, when the bids were read on this 1933 bidding?

A. Yes.

11758 Q. Did you handle in any way the auditing of the billing for the business which resulted from this 1933 bid?

A. I checked the invoices and approved them for payment.

Q. In the course of that work, did you learn or ascertain anything with regard to shipments by Universal-Atlas on behalf of the Louisville Company, and vice versa?

A. Yes.

Trial Examiner Norwood: Now, ask another question.

By Mr. Wooden:

Q. Did you handle the payments in any way that were made to the Universal-Atlas and the Louisville Company?

11759 A. I did.

Q. What were the facts, as you knew them to exist at that time, regarding the matters that I have asked you about?

A. The freight bills submitted in support of some invoices of the Louisville Cement Company were—showed shipment by the Universal Cement Company.

By Mr. Wooden:

Q. Universal-Atlas, you mean?

A. That is right.

Q. You mean that you paid to the Louisville Cement Company for shipments that were actually made by the Universal-Atlas?

A. The invoices were presented by the Louisville Cement Company. The freight bills submitted showed
11760 shipment by the Universal Cement Company, but the order, the purchase order, which was authority for payment, was issued to the Louisville Cement Company.

Q. And payment made to the—

A. Payment made to the Louisville Cement Company.

Q. Now, is there anything of a similar character with regard to shipments by the Louisville Company on behalf of Universal?

A. I don't—

Mr. Leisure: Your honor,—just a minute, Mr. Witness —I wonder if we can have some offer of proof on this line of testimony. It does not come within any of the allegations in the complaint, that I know of. We are out now just developing some new facts, and we should know whether they come within the complaint.

Mr. Wooden: Your honor, of course, there is no specific allegation in the complaint regarding this particular sort of transaction. Of course, we have broad allegations in addition to the specific ones, saying that the respondents used other methods to accomplish the same or similar results, and I take the position that any concerted action of any type that tends to produce or maintain the system that is set up in the complaint is relevant and comes
under the general allegations as to the other methods
11761 which have not been specified.

Mr. Zimmerman: But what does this tend to prove as to any improper method? May we take this off the record?

Trial Examiner Norwood: Well, I think it might well stay on the record.

Mr. Zimmerman: All right.

Trial Examiner Norwood: Because I will have to make a ruling on this.

Mr. Zimmerman: All right. I think this is so, that there are times when a company may by reason of some fortuitous circumstance over which it has no control be in a position where it cannot make delivery, and I know that there would be certainly nothing either inhuman or illegal about securing the services of another company to make delivery for it.

Trial Examiner Norwood: It is already in evidence where a mill shipped for another mill.

Mr. Zimmerman: Why, certainly, and the conditions under which it came out of New York, as you recall.

Mr. Wooden: Not quite as specific as this one.

Trial Examiner Norwood: Do you propose to show that after getting these bids, the mill that made a bid which would give it a very low or disastrous mill net then had a near mill to ship it for them?

11762 Mr. Wooden: There is a reciprocal arrangement here, as I understand it, between the Universal and Louisville, whereby Universal shipped into the territory near its mill, although Louisville had been low in that territory in the bids, and vice versa.

Trial Examiner Norwood: Do you mean on contracts that both had bid for?

Mr. Wooden: That both had bid on, and when they got the award, they made this trade among themselves about delivery.

Mr. Zimmerman: What would be illegal about it, I don't understand.

Mr. Wooden: It is a form of concerted action.

Trial Examiner Norwood: Well, do you want to show the practice was general—

Mr. Zimmerman: In the industry.

Trial Examiner Norwood: (continuing) —in the industry?

Mr. Wooden: I don't know whether I do or not. It doesn't make any difference whether it is general.

Mr. Zimmerman: Oh, yes, I think it makes a great deal of difference.

Trial Examiner Norwood: Unless you contend there was a general practice here and that shows—

Mr. Wooden: Just how general it is, your honor,

11763 we will never know.

Mr. Zimmerman: Well, if that is the instance you

have of it, you certainly would not say that the other respondents could be involved in it, could they?

Trial Examiner Norwood: Now, this is off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood: Read the pending question, please.

(The question referred to was read by the reporter.)

Trial Examiner Norwood: The objection is overruled, and you answer that from your own knowledge. If you know it, tell it.

A. I don't know that there was.

Trial Examiner Norwood: All right. There was a pending proffer, I believe. This is off the record a minute.

(A discussion ensued off the record.)

Mr. Zimmerman: I think the record ought to be clear as to what the thing is.

Trial Examiner Norwood: I think it was clear when he offered it, but we got off on another subject. This is Exhibit 1859-A to CC.

Mr. Wooden: He stated what it was and whether it went to the extent of sending it out.

11764 Mr. Zimmerman: I don't care, if the record is clear. Then I won't make any objection.

(COM. EX. 1859-A to CC was offered and received in evidence.)

By Mr. Wooden:

Q. I am showing you, Mr. Foley, papers marked, for identification, as Commission's Exhibits 1860, 1861, 1862-A and 1862-B. Do you know anything about those papers, or have you ever seen them before?

(Handing documents to witness.)

A. No, I haven't seen these before.

Q. Can you say whether or not they relate to the matter that you have been testifying about?

A. They do.

Mr. Wooden: Your honor, I have here the papers that the witness has just referred to. They are copies which were furnished the Commission some years ago by the Indiana State Highway Commission. They consist of correspondence between Universal-Atlas, Louisville Cement Company and the Indiana Commission, and the reply of the Indiana Commission to those communications.

I should like to offer them at this time subject to

11765 check, which the respondents can readily provide by resorting to the files of the companies involved.

Trial Examiner Norwood: Any objection?

Mr. Wooden: I might say that the letter from the Indiana Commission is a joint letter to both Universal-Atlas and the Louisville Company.

Mr. Zimmerman: Well, my objection, without looking at them, would be, unless there is some showing that it comes within some particular paragraph of the complaint, I would object to them as not being within the complaint, and furthermore, that unless there is some showing that they are connected with the Respondent Institute or the Respondent, Marquette, I shall object to them.

Now, the contents may or may not throw light on that, but I would like to see them.

11766 Trial Examiner Norwood: All right, gentlemen. Are there any objections to the proffer?

Mr. Leisure: Yes, your Honor. These letters are between the State Highway Commission and one respondent, the Universal-Atlas Company and another company which is not a respondent. The matter raised or the episode dealt with there in the correspondence does not prove or tend to prove any of the allegations in the pleadings. For that reason we object to them as being immaterial, and on the further ground that the proof should be confined to the one respondent involved in the transaction.

Trial Examiner Norwood: Is there no objection to the identification of these documents?

Mr. Leisure: No. We will not raise any objection as to identification, subject to checking them with the originals. None of these are original documents.

Mr. Zimmerman: I have nothing more to say.

Trial Examiner Norwood: I should like to look at those just a minute, if you don't mind.

(The exhibits referred to were handed to the Trial Examiner.)

11767 (COM. EX. 1860, 1861 and 1862-A and B were offered and received in evidence.)

The witness identified Com. Ex. 1863 as a tabulation of cement prices quoted in the bids of various cement companies which was received January 21st, 1932, for furnishing cement to the Indiana State Highway Commission during the year of 1932. It is a tabulation of the State Highway Commission and the witness says that it is a duplicate of the official tabulation which he brought. They are identical.

Mr. Wooden: I will offer Commission's Exhibit 1863, and proffer for checking the original bids which the witness has produced.

11768 *Voir Dire Examination by Mr. Leisure.*

"This" is a blueprint of the orginal tabulation. "Amount of proposal" in the lefthand corner is taken like the figures from the bids of the various cement companies and put on the original tabulation transcribed and
11769 blueprinted. It is taken from the bids of the cement companies.

Mr. Leisure: We have no objection.

By Mr. Leisure:

Q. Would you know by looking at that which bid that was taken from (indicating)? Could you tell if we gave you the bids?

A. Yes, it would be the bid received January 21, 1932.

Q. Of which company?

A. Well, of either one of these. You mean the first line?

Q. This doesn't need to be on the record. We would just like to find that. Could you take those and find that?

Trial Examiner Norwood: You might take this on the record. It is informative.

A. These quantities refer to each company.

By Mr. Leisure:

Q. I am talking about the amount down there at the bottom.

A. This amount down here (indicating)?

Q. Over there in the corner.

A. Oh, over here?

Q. Yes.

A. Oh, yes, I can tell. You mean the price there in the corner?

Q. Yes, those two figures there in the lefthand corner.

A. It refers to the Wabash Cement Company. I think you will find the asterisks—

11770 Q. Will you find that for us? (Handing the witness a paper writing.)

Trial Examiner Norwood: Is that in evidence?

Mr. Leisure: No, it is part of the supporting data. It is a folder containing the bids.

A. Here it is. There is the place where it is mentioned (indicating).

Q. Whereabouts?

A. (Witness indicates).

Mr. Leisure: In view of the fact that we will be returning these bids to the Indiana Commission, I assume that Mr. Wooden will not object to photostats being offered in evidence in case we want to offer anything?

Mr. Wooden: No, no objection.

11772 *Examination on Voir Dire by Mr. Zimmerman.*

Q. Does this Commission's Exhibit 1863 show the awards, if any, that were made under the several bids that are tabulated herein?

A. No.

11775 (COM. EX. 1863 was offered and received in evidence.)

11777 Mr. Wooden: Of course, we all understand, I think, that during 1932, by contrast with other years, the prices were not identical, if that is what is sought to be shown. I will say that I think the abstract will show that too.

Trial Examiner Norwood: Now, it is the understanding, gentlemen, that photostats may be substituted for the originals.

Mr. Leisure: That is my understanding.

11778 Trial Examiner Norwood: Let the record show that the counsel for the Commission has asked that these entire bids which contain respondents' exhibits just received, from 51 to 60, inclusive, shall be marked Commission's Exhibits for identification, 1865 to 1874, both inclusive.

By Mr. Wooden:

Q. Mr. Foley, what is the paper I show you, marked Commission's Exhibit 1864, for identification?

11779 A. This is the official tabulation of cement prices contained in the proposals received December 17th, 1931, furnishing cement to the Indiana State Highway Commission for the year of 1932.

By Mr. Wooden:

Q. Does that relate to the same set of requirements for the same period that the preceding one did?

A. Which?

Q. I thought we had one for 1932,—No. 1863.

(Handing document to witness.)

A. Yes, this is the first proposal for the needs for 1932 that I have here now.

Q. Why was there a second proposal that is rep-
11780 resented in the abstract of 1863?

A. The State Highway Commission rejected the bids received December 17th, 1931.

Q. Which is in 1864?

A. That is right.

Q. And you have here the original bids and the proposals received under this tabulation, Exhibit 1864?

A. Yes, in December, 1931.

Mr. Wooden: I will offer Exhibit 1864, the abstract, and proffer for checking purposes, as I did before, the original material consisting of the original bids.

Trial Examiner Norwood: Any objection?

Mr. Leisure: No objection.

Mr. Zimmerman: No objection.

(COM. EX. 1864 was offered and received in evidence.)

Q. Can you tell us, Mr. Foley, whether those abstracts shows also the volume or quantity that was bid on
11781 by the respective bidders?

A. Yes.

Q. Does it also show the total that the State was seeking to obtain bids on?

A. I don't understand.

Q. The total quantity, does it also show the total quantity on which the State was seeking bids?

A. No, it doesn't show that.

Q. Can you tell us that by reference to any of the papers?

A. By reference to any of the proposals for that particular bidding. Each one shows the total quantity.

(Thereupon the proposals referred to were handed to the witness.)

A. This is the proposal upon which bids were received in December of 1931. It was for 2,000,000 barrels of Portland cement and 20,000 barrels of High Early strength.

Mr. Wooden: Will you give that the next number, please?

(The tabulation referred to was marked "Commission's Exhibit 1875", for identification.)

By Mr. Wooden:

Q. What is the paper I show you, marked Commission's Exhibit 1875, for identification?

(Handing document to witness.)

A. This is the only tabulation I could find in
11782 the files for the cement to be furnished in the year 1931. This doesn't bear date, but was filed in the State Highway Commission's files with the cement bids for that period, and that was before my connection, so all I know is that I took it from the files along with the bids.

11783 Q. Did you check that tabulation with the bids sufficiently to know that it did relate to the 1931 bids?

A. I did—I did verify it that much to feel certain that it was the tabulation of those bids, but this rough draft, there was a short cut used, apparently, only showing the cents over and above a two dollar price, below that, the entire amount. So that where the tabulation shows 24 cents, the bid showed $2.24, and so on. I think that is the system on which it was made.

Q. How was it indicated where it came below $2.00?

A. They showed the full amount, like $1.85, they gave that, or $1.95, the full amount.

Q. Oh, I see.

A. But all over $2.00 seemed to have just the cents shown on it?

Q. I see. Are these bids on Standard Portland cement or on special quality cement like high early?

A. These are all on standard. I don't think there was any high early strength asked for on that bid.

Mr. Wooden: I will offer this Exhibit 1875, and proffer the bids which accompany it as supporting data for checking purposes.

The Witness: I might give a fuller explanation of that. There is a full explanation of that on the back there.

11784 Trial Examiner Norwood: A little louder.

The Witness: It is only my explanation, but there was an adjustment of prices, and the adjustment is contained on the back of it. You will find in the bids all adjusting prices of those marked on the back of it.

By Mr. Wooden:

Q. Is the writing on the back in your handwrit

A. No, that was before I—

Q. I see.

Trial Examiner Norwood: Any objections?

Mr. Leisure: I am wondering if it would be possible to

keep the original in this instance because this can't be photostated. It is in pencil; it won't show.

The Witness: Do you mean permanently?

Trial Examiner Norwood: Until after the determination of this case.

The Witness: I don't think that the State Highway Commission of Indiana is in a hurry to get them back; that is, there is no particular need that I know of for a rush on it, but I wouldn't say that it could be permanently taken out of the file because it is a state document.

Mr. MacIntyre: Off the record, if your Honor 11785 please.

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood: Make that statement for the record.

Mr. MacIntyre: If your Honor please, in the light of the point that has just been raised by Mr. Leisure, we suggest that the original at this time be received as offered with the understanding that it may be substituted by some copy that would be clear and show all of the prices shown on this at some time in the near future, the substitution being made and the original then being returned to the witness.

Trial Examiner Norwood: Yes. The respondents agree to that?

Mr. Leisure: Now, Mr. Foley, you spoke of a front and back. I suppose it ought to be marked "A" and "B" as to which is front and which is back.

The Witness: Yes. The front is the original tabulation of all the bids, which is this number (indicating), and the back has two, four, five, six, seven adjustments.

Trial Examiner Norwood: That is, seven columns of figures?

The Witness: Yes. I think you will find it also 11786 will verify that adjustment on the back.

(COM. EX. 1875 was offered and received in evidence.)

By Mr. Wooden:

Q. Can you say, Mr. Foley, what the total quantity was that the State invited bids on in that case?

A. The proposal for which bids was received on March 13, 1931, called for 1,750,000 barrels of Portland standard cement and 20,000 barrels of high early strength.

Q. What is the paper I show you marked "Commission's Exhibit 1876," for identification?

A. This is a tabulation of cement prices contained in proposals received November 19, 1929, for furnishing cement to the Indiana State Highway Commission during the year 1930.

Q. Is that the official tabulation?

A. That is the official tabulation that I took from the files of the highway commission.

11787 Q. What was the total quantity of cement the state invited bids on, on that occasion?

A. I don't think that they fixed a total. I don't find it there.

Q. All right.

Mr. Wooden: I will offer Commission's Exhibit 1876 and proffer the supporting data which the witness has produced in the form of the original bids. Give this the next number, please.

(The document above referred to was thereupon marked for identification as Commission's Exhibit 1877.)

Trial Examiner Norwood: Any objection?

Examination on Voir Dire by Mr. Leisure.

Q. In regard to whether the State fixed any amount, Mr. Foley, will you just look at "1930 Alpha Portland Cement Company proposal," and see if it doesn't say 2,000,000 barrels?

A. Yes, it does, and I overlooked that. It reads 2,000,000 barrels. That is—

11788 Q. That is correct? That is the amount that was asked for, isn't it, Mr. Foley?

A. Yes, I missed it in looking at that page when I said I couldn't see it.

Trial Examiner Norwood: Yes.

Mr. Wooden: Do you mean—

The Witness: Of course, when I say that is correct, I don't know of my own knowledge, because I was not with the highway commission at that time, but that is—

By Mr. Leisure:

Q. That is part of the official record?

A. That is part of the official record.

Q. You have no reason to dispute it, have you?

A. No.

11794 By Mr. Wooden:

Q. One moment. What is the paper I now show you, Mr. Foley, marked Commission's Exhibit 1877, for identification? (Handing document to witness.)

A. This is the tabulation of the bids taken from the official files of the Indiana State Highway Commission, bids received by the Indiana State Highway Commission for cement on April 23rd, 1929. This is for the use of the Commission during the year of 1929.

Q. Do you have with you also the original bids of the various bidders?

A. I brought the complete file.

Q. Will you state what the quantity is that the State asked bids on on that occasion?

A. 1,300,000 barrels of standard Portland cement.

Q. That is the total quantity the State asked bids on?

A. That is the total quantity.

Mr. Zimmerman: Now, would you deliver that, with your supporting data?

Mr. Wooden: I will offer now the abstract just identified by the witness as Commission's Exhibit 1877 and offer for checking purposes the supporting data that we have also produced, consisting of the original bids.

11796 (COM. EX. 1876 and 1877 were offered and received in evidence.)

Cross Examination by Mr. Leisure.

Q. Mr. Foley, I think you said that in 1933 you discontinued purchasing directly from the manufacturers; is that correct?

A. Yes.

Q. In 1933, at the time the State discontinued purchasing directly from cement manufacturers, was there not a change in the organic law in the state purchasing authority at that time?

A. Yes, the legislature of 1933 enacted a new

11797 highway commission law.

Q. Did the new purchasing authority adopt the policy of having contractors purchase directly from the manufacturers at that time?

A. Having what?

Q. Of having the contractors purchase directly.

A. That didn't follow immediately, but it was very shortly after—yes, I might say yes, because the only purchases they made from the mill after that was sufficient to complete contracts already let on the old plan.

Q. And at that time it also adopted the new policy of having small orders for cement purchased from dealers other than the manufacturers?

A. For maintenance purposes, yes.

11799 *Cross Examination by Mr. Zimmerman.*

Q. Referring to Commission's Exhibit 1863, what year does that cover, if you please? I know that it is contained in it, but nevertheless, will you state?

A. It covers the supply for the year 1932.

Q. Well, now, do you know or can you tell us to whom lettings were made or contracts were awarded under that bidding?

A. The Highway Commission at its meeting on February 11th, 1932 awarded 25,000 barrels to Cosmos Portland Cement Company—

Q. I didn't hear that. Cosmos how much?

A. 25,000 barrels, Cosmos; Lehigh Portland Cement Company, 475,000 barrels; Lone Star Cement Company of Indiana, 500,000 barrels; Louisville Cement Company, 425,000 barrels; Marquette Cement Manufacturing Company, 200,000 barrels and Wabash Portland Cement Company, 175,000 barrels, and it is a total of 1,800,000 barrels.

Q. Which ones of those successful contractors had their mills located in the State of Indiana, if you can tell us?

11800 A. Lehigh, and the Lone Star, and the Louisville Cement Company, and the Wabash Cement Company.

Q. Neither Cosmos nor Marquette had a mill in Indiana?

A. No.

Q. Now, all of these purchases were made at delivered prices, were they not?

A. Yes.

Q. That was considered for the best interests of the State?

A. It must have been. That is the way they asked for prices.

Mr. MacIntyre: Your Honor please, we object to such questions as that. Mr. Zimmerman should ask whether or not it was to the interests, rather than to testify for the witness and have him answer yes or no after he says: That was to the best interests of the State, was it not, then has the witness answer yes or no.

Trial Examiner Norwood: The objection is sustained and the answer stricken.

Mr. Zimmerman: My question was not quite as counsel stated, I think.

Trial Examiner Norwood: Your question wasn't sufficient and definite. You can ask him what he knows or you can bring out any facts which would indicate what anybody else considered.

11801 By Mr. Zimmerman:

Q. Well, I had reference only, Mr. Witness, to what your Department considered for the best interests of the State with reference to the fact of making purchases. Can you tell us that?

Trial Examiner Norwood: Can you answer for your Department in that respect?

A. That was the opinion of the Department, yes.

By Mr. Zimmerman:

Q. You see, they have stricken out the previous question and answer, so you will have to state it again. You mean by that to get it at delivered prices it was to be best interests?

A. Yes, it was considered best to pay the delivered price.

Q. I see. Now, then, can you say why, when it appears from your "1863" abstract of the bid that the Marquette Company was low bidder on some 55 destination points and Lone Star apparently was not low on any, why 500,000 barrels was awarded to Lone Star and only 200,000 barrels to Marquette?

Mr. Wooden: I object, Your Honor, on the ground it is irrelevant and immaterial just how the State awarded the contracts, and it is entirely within the discretion of the State, if it so chooses, to favor contractors within the State,—I mean mills within the State as against
11802 those outside the State.

Mr. Zimmerman: I had assumed that it was claimed here that some wrong had been done because of

the method of bidding. There must be some reason for putting in these exhibits. They must illustrate some point in the complaint. I don't know what it is, to be sure, but I assume that Counsel considered them relevant to some particular part of the complaint.

Now, if a company puts in bids on the theory that the award will be made to them where they are the lowest bidder, and they get no benefit from it, then I think it is material and relevant, when it comes time for them to make another bid and they don't put in a bid lower than anybody else, because they have obtained no proper benefit from it before. Doesn't that have to do with their reason for so acting? Isn't that material and relevant?

Mr. Wooden: That isn't what you are seeking to show by—

Mr. Zimmerman: What I am seeking to show may not be quite so plain to you, but I think I have clarified it.

Trial Examiner Norwood: His question goes to the method of making the award, is that right?

Mr. Zimmerman: In addition to the method of
11803 bidding. The two things are hooked up together.

Trial Examiner Norwood: Well, I think the Commission asked a question that went to the same subject there.

Mr. Zimmerman: I think so.

Mr. Wooden: In the case of identical bids, how they did it. I didn't ask how they awarded when the bids were not identical.

Trial Examiner Norwood: But I think he can bring that out.

Mr. Zimmerman: I think so.

Trial Examiner Norwood: Objection overruled. Read the question, please.

(The question referred to was read by the reporter.)

A. No.

By Mr. Zimmerman:

Q. Did it have anything to do with the fact that Lone Star's mill was located in Indiana, that is, favoring the home industries, to some extent?

A. Anything I would say on this line would not be authoritative, because I was not in a position of making awards or of knowing why they were made.

Q. Well, if you do know, I want you to tell us what you

do know, but I don't want you to stretch your imagination on the point.

11804 Trial Examiner Norwood: Answer from your own knowledge, and if you don't know, tell him you don't know.

A. I don't know.

11805 Q. You had never missed the point as suggested by Mr. Wooden that the states would have a right to favor home industry? Did you hear anything of such favoring of home industries in connection with this award?

A. I understand that is one of the considerations that the highway commission makes in considering purchases of all kinds.

Mr. Wooden: Your Honor, I move that the question and answer be stricken on the grounds it is irrelevant, repeating the objection I made at the time the first question along that line was asked.

In that connection, I would call your attention to the fact that the record already shows that the Institute has had a committee at work to prevent the very sort of thing that Mr. Zimmerman is asking about, that is, to prevent the favoring of home industry and throw the bars down to all bidders.

Mr. Zimmerman: That is to say, you say that the Institute has taken some action, according to this record, to the end that bids will be let to the lowest bidder?

Mr. Wooden: I wouldn't say that, except the lowest bidder when they were identical. That is what is involved.

Mr. Zimmerman: If they are identical, I assume

11806 that there is a lowest bidder.

Mr. Wooden: They are all low, equally low.

Trial Examiner Norwood: I think there is enough out on this subject to render this relevant as to whether or not this particular state favors manufacturers located within their state. We have had testimony out on that. That has been brought out.

Mr. Wooden: I see no bearing that it has upon the question of Respondents' activities in the case.

Mr. Zimmerman: Here is the bearing that it has. They have offered in evidence here a series of tabulations of bids. My understanding from what counsel for the Commission has said is that the first set of tabulations, I mean by that the earliest in date and not the earliest in exhibit numbering, show that there was identical bidding, and

the state threw out all the bids, and they asked for further bids. And they proceed to the point where they get bids that are not identical. And then appears, as it will from this evidence, which we expect to show and bring out, that the awards, however were not made to the lowest bidder, when they finally succeeded in getting some one to bid lower than any one else. They don't recognize that as the basis for an award, but they now choose some other basis concerning which there isn't any possibility of com-
11807 petition; that is to say, Marquette couldn't, for example, move its plant over in Indiana in order that it might get the benefit of the favoring of an Indiana company by location.

The bids are awarded not upon the competitive prices bid, but upon the accident or fortunate circumstance for those companies that they happen to have a plant in Indiana.

Trial Examiner Norwood: I think this information can come out and help us in interpreting the documentary evidence which you put in here.

Mr. Wooden: I have no objection except to me it looks irrelevant, that is all.

Trial Examiner Norwood: Yes. Objection overruled. Go ahead.

By Mr. Zimmerman:

Q. Now, in the case of Evansville, where it appears from your abstract that there were two that bid $1.14, that is, Lehigh with its plant at Mitchell, Indiana, and Marquette that did not have a plant in the state, the award was not made to Marquette but to Lehigh. Would that not appear to be one of an instance or several instances where they took into consideration the fact that the plant was located in Indiana?

A. That may have been one consideration.

11808 Mr. Wooden: Just a minute. Just a minute.

Mr. Zimmerman: What?

Mr. Wooden: The witness has said generally that he didn't know what considerations entered into the decision of the Indiana Commission in making these awards. Now, Mr. Zimmerman is seeking to have him surmise that a certain thing did enter into it, and that can be no more than a surmise under the circumstances.

Trial Examiner Norwood: Yes, I think that this witness should be confined to matters of fact which would indicate—

Mr. Zimmerman: I am not asking him to tell us anything that he doesn't know.

Trial Examiner Norwood: Read the question.

Mr. Zimmerman: He does know something about the situation, certainly.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: Now, if your Honor pleases, he is not asking for the witness' knowledge there but he is asking him for something that appears on a document that is already in evidence.

Trial Examiner Norwood: The objection is sustained.

Mr. Zimmerman: Let him confine—all right.

11809 By Mr. Zimmerman:

Q. Now, it is true from your records, is it not, and from your knowledge as you have ascertained the facts to be, that Lone Star, which, according to your abstract, was not low at any destination received an award of a number of barrels in excess of any other bidder regardless of how low they might be? Is that not so?

A. Yes.

Q. Is it not also true that after the quotations were received, your Commission, that is, the Indiana State Highway Commission, permitted some of the companies with plants in Indiana to amend their quotation or to file revised quotations based upon the lowest prices that had been received? In other words, to equalize the bids of other bidders?

A. Yes.

Q. So that the result was that you then had identical bids again, is that not so?

A. Yes.

Q. By reason of that revision. And then that having resulted, so that you had those identical bids, you then made the awards to those who had thus been permitted to meet the lower price by making their bid identical?

A. Yes.

11810 *Redirect Examination by Mr. Wooden.*

Q. Mr. Foley, after the bids became again identical, as Mr. Zimmerman has just outlined, did the state continue to award the larger portion of the business to Indiana concerns?

A. Yes.

Q. Now, referring to this change in policy resulting from a change in the law in 1933,—was that in 1933?

A. 1933.

Q. Was the change in policy mandatory under the law or was it discretionary with the Commission as to whether they would continue with the previous method of buying cement direct?

11812 A. The Highway Commission decided to discontinue the practice of purchasing cement of their own desire and decision.

By Mr. Wooden:

Q. Do you mean by that without being required to do so?

A. That is what I mean, that they have entire discretion in purchases.

11821 CLARENCE A. HAMLIN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am employed by the Division of Highways, State
11822 of Illinois, as office engineer in the Bureau of Construction and have held such position for fourteen years.

Q. Were you connected with the Department prior to that time, in any capacity?

A. Yes, sir, five years as resident engineer in the field.

Q. What have been your duties as assistant engineer,—is that it?

A. Office engineer.

Q. What have been your duties as office engineer?

A. I have charge of supervision of all of the office business transacted in the Bureau of Construction.

Q. What have been your duties in that office with regard to the handling of bids and the making of the purchases of cement?

A. I have supervised the preparation of the invitations to bid and assisted at the reading of the bids and tabulation of the same. That is all.

Q. Have you had anything to do with the awarding of the contracts?

A. No, sir.

Q. What has been the general method used by the
11823 Highway Commission of Illinois in the purchase of its cement requirements?

A. Cement is purchased from the lowest bidders.

Q. What has been the method employed by the Highway Commission in purchasing the cement with reference to the parties from whom or through whom it has been purchased?

A. I do not know.

Q. Can you say whether or not there has been at any time a policy of buying the cement requirements of the Commission direct from manufacturers entirely?

A. The question is vague to me, sir.

Q. During any period while you were occupying this position in carrying on the duties you have described, did the Highway Commission undertake to purchase its cement requirements direct from mills?

A. Yes, sir.

Q. Its entire requirements?

A. From mills, yes, sir.

Q. During what period was that?

A. As far as I can recollect, they have always purchased their cement direct from the mills.

Q. And are they still doing so?

A. Yes, sir.

Q. You have heard the testimony of Mr. Foley from the Indiana Commission?

11824 A. Yes, sir.

Q. Has the Illinois Commission at any time adopted the policy of following the practice of buying cement through contractors?

11825 A. Yes, sir.

By Mr. Wooden:

Q. Do I understand from that that there has been a period or periods when it bought some of its requirements direct from mills and at the same time buying some of its requirements through contractors?

A. Yes, sir.

Q. How long has that been the case?

A. Since 1934 the State of Illinois has specified that

the contractors shall furnish their own cement on highway construction.

Q. And during that same period the State, as I understand it, also bought some cement direct from mills?

A. For their own requirements, yes.

Q. And prior to 1934 did the State buy entirely from mills or partly from contractors, or how was it before that time?

A. Prior to 1934 it bought entirely from the mills direct.

Q. Is it a fair inference from those things that you have answered, that the purchases of the State prior to 1934, direct purchases, were very much larger than they have been since?

A. You mean the volume?

Q. Yes.

11826 A. Or the price?

Q. Yes, the volume.

A. The volume of cement depends upon the highway program for concrete, Portland Cement concrete pavement, and I would say that since we have been building less Portland cement concrete pavement, that the cement purchases by the contractors would be less than when we build a lot of Portland cement concrete.

Q. Have the purchases of the State since 1934 been primarily for maintenance purposes of the highways?

A. Yes, sir.

Q. Give us some idea of the relative volume of the State's purchases during the period when they were buying for construction rather than maintenance.

A. In the years when they were buying cement for highway construction, we were purchasing between two and a half million to five million barrels per year. For our own requirements since 1934 we have been purchasing in the neighborhood of one hundred thousand barrels per year.

Q. Can you say approximately how much since 1934 has gone into State highway construction where the

11827 cement was purchased by contractors?

11828 A. From my own certain knowledge, I cannot say. I would have to refer to the records of the Department.

By Mr. Wooden:

Q. Have you had access to bids on cement made to contractors by the mills since 1934?

A. No, sir.

Q. Have you had access to the contractors' bids for State highway construction since that time?

A. Yes.

Q. Have you in that connection had access to the charge made for cement by contractors?

A. Yes.

Q. Have you had occasion to compare the costs of cement to the State furnished through contractors with the costs furnished on direct purchases by the State?

A. Yes.

11830 Q. Have you made any comparison between the costs of cement to the State purchased direct from the mills and the cost to the State when furnished by contractors, that is, as of the same period?

A. I have made no comparisons, but I have made observations.

By Trial Examiner Norwood:

Q. You mean that you can tell us as to these different prices under the different circumstances?

11831 A. Not definitely as to certain destinations; just in general as to the variations in the prices.

Mr. Wooden: Let me ask you a further question there—

Mr. Zimmerman: Which is an opinion.

By Trial Examiner Norwood:

Q. Variations at certain points?

A. Which is an opinion based upon my recollection, but not upon any certain destination.

11833 A. I may have been wrong in using the word "opinion," but it may have a legal significance that I do not understand. The question, as I understood it, was did I have any knowledge of a difference in the price that the contractor was bidding on cement as compared with the unit price which the state was paying for its cement at the same destinations.

Trial Examiner Norwood: At the same time?

The Witness: The same time.

Mr. Wooden: That was the intended question.

Trial Examiner Norwood: Your answer to that is yes?

The Witness: I have knowledge of a variance in the prices.

11834 Trial Examiner Norwood: Was there any general price for cement?

The Witness: There is a market price of cement.

Trial Examiner Norwood: For all destinations?

The Witness: For all destinations as they apply to our contract with the cement mills for the cement used by the State of Illinois.

Trial Examiner Norwood: For delivery in the state?

The Witness: Yes, sir.

Trial Examiner Norwood: Now, what time was that?

The Witness: That was for the year 1938.

Trial Examiner Norwood: What was that price?

The Witness: Well, the price varies according to the destinations. There are 102 destinations in the State of Illinois.

11837 By Mr. Wooden:

Q. In what form, Mr. Hamlin, is the material that you say would be available to substantiate your general statement?

A. The contractors' proposals, contractors' proposals.

Q. From the mills?

A. No, sir.

Q. Compared—

A. No, sir. I am speaking of the highway contractors' proposals.

Q. Yes. Compared with what the state is actually paying when buying direct, is that right?

A. That is right.

Q. Will you prepare when you return to Springfield a tabulation which is drawn from the records you have referred to and send it to me?

A. Yes, sir.

Mr. Zimmerman: Well, will he also send a copy to the Respondents' counsel?

The Witness: Yes.

Mr. Wooden: That is perfectly all right.

The Witness: Give that man your name right there.

Mr. Zimmerman: I beg your pardon?

The Witness: Give that man your name right there.

Mr. Zimmerman: The name is Edward A. Zimmerman, 111 West Monroe Street, Chicago. I speak only
11838 for myself. Mr. Leisure or Mr. Withrow—

Trial Examiner Norwood: Counsel will give the witness their addresses.

By Mr. Wooden:

Q. Can you say, Mr. Hamlin, why it was that the State

Highway Commission since 1934 has been buying cement only for maintenance purposes direct from the mills and for construction purposes as furnished by contractors?

Mr. Leisure: I object to that. The witness has stated the conclusions—

Trial Examiner Norwood: Answer that yes or no. Can you state that?

The Witness: Yes.

Trial Examiner Norwood: Objection overruled.

By Mr. Wooden:

Q. Will you state why?

A. That is because of the WPA and the NRA regulations which require the contractors to furnish all materials entering into the work.

Q. You refer to NRA regulations—

Mr. Zimmerman: No. Did he?

Mr. Wooden: Yes.

Mr. Zimmerman: WPA and what else? Did he mean NRA?

Trial Examiner Norwood: Did you say NRA?

11839 The Witness: NRA and WPA.

Mr. Zimmerman: That is right. It was in existence before that period, wasn't it?

Mr. Wooden: Yes.

Mr. Zimmerman: Sure.

By Mr. Wooden:

Q. Do you mean that the policy in that regard has remained the same since the NRA, that began under NRA?

A. Yes, sir.

Q. Do you mean that the WPA purchasing policy became the same as the NRA in that regard?

A. In that regard, yes.

Q. Why does the State of Illinois Highway Commission—why has it followed the policy indicated or set up by WPA or NRA?

A. Because if we did not follow the policy we would not receive the WPA money.

Q. For highway construction, you mean?

A. Yes.

Q. How large a factor has the WPA money in highway construction been in the State of Illinois?

A. It has been a considerable factor. We have had WPA grants amounting to $10,000,000 in one year.

Q. Since 1934?

A. Yes, sir.

11840 Q. Mr. Hamlin, can you state generally to what extent contractors on state highway construction buy direct from mills and to what extent generally they buy from dealers?

A. No, sir.

11842 Q. From your knowledge of the way the contractors do business with regard to state highway construction, can you say whether or not they buy from dealers within the limits of towns where dealers operate and buy direct outside the limits of such towns?

A. No, sir.

Q. What is the method or mode of handling the state's funds where the contractor buys his cement and uses it on state highway construction?

A. The contractor is paid on a payment estimate for the number of barrels he submits—correction—that he uses at the unit bid price for cement.

Q. What unit bid price?

A. At the unit bid price for Portland cement.

11843 Q. By the contractor?

A. The contractor's unit bid price.

Q. That is what I meant. And is it that unit bid price of the contractor that you had in mind when you were asked to make a comparison between the prices, the costs, rather, through that method of purchasing and the purchase direct?

A. Yes.

Q. Have you brought here today, Mr. Hamlin, the records showing the purchases of cement by the State Highway Commission of Illinois over a number of years?

A. Yes, sir.

Q. Do you have them for the period subsequent to 1933?

A. Yes, sir.

Q. Will you produce them and let me have them, please?

(Paper writings were handed to Mr. Wooden.)

By Mr. Wooden:

Q. Has it been the practice of the Illinois Highway Commission in obtaining bids on cement for direct purchase to abstract those bids or tabulate them for the pur-

pose of determining or making a comparison in making awards?

A. Yes, sir.

Mr. Wooden: Give this the next number, please.

(The paper writing referred to was thereupon marked for identification as Commission's Exhibit 1878.)

11844 Q. What is the paper I show you marked "Commission's Exhibit 1878," for identification?

A. This is a tabulation of bids received on March 25, 1936, by the Illinois Division of Highways for the cement required in the construction of highway work for the year 1936.

Q. Was there any specific amount asked for in the invitations to bid?

11848 Mr. Wooden: I will offer Exhibit 1878, for identification, and proffer the supporting data produced by the witness, consisting of the original bids themselves that are abstracted and tabulated on that Exhibit 1878.

11854 Q. Mr. Hamlin, what is the paper I now show you, marked Commission's Exhibit 1879, for identification?

(Handing document to witness.)

A. This is a tabulation of bids received on March 30th, 1937 for Portland cement by the Division of High-

11855 ways of the State of Illinois.

Q. Have you produced the underlying data from which that was made up?

A. Yes, sir.

Q. And does that consist of the original bids?

A. Yes, sir.

Mr. Wooden: Your Honor, I offer this exhibit 1879 and proffer the supporting data for checking purposes. The same consists of the bids, or rather, to be exact, the proposals and specifications submitted by Ash Grove, Marquette—her eis another Ash Grove, a carbon copy it is marked,—an original and a carbon copy of Ash Grove, Marquette, Alpha, Lehigh, two copies of Lehigh, one original and one carbon; Universal-Atlas, Dewey, Lone Star, Missouri and Medusa.

11858 Q. Mr. Hamlin, in submitting invitations for bids, has the same invitation in the exact form gone to each bidder?

A. Yes.

Q. On any particular bidding,—I mean on any particular invitation?

A. Yes.

Q. Each bidder had the same invitation, is that right?

A. Yes.

Mr. Zimmerman: Now, will you ask him, or let me, because I think it is pertinent.

By Mr. Zimmerman:

Q. And was the same form of contract used for
11859 each one of the bidders to whom an award was made, the same form of contract?

A. Yes.

11860 By Mr. Wooden:

Q. Now, before passing on to the next number, let's have a clear understanding, if we can, Mr. Hamlin, as to what the pencil figures at the top of Exhibit 1878 are, what they mean.

A. I have already answered that question.

11861 Q. I think you did.

A. I wouldn't want it to appear—

Q. Well, we have a difference of opinion as to what you meant in the answer, I believe, so we want to clear it up,

A. I said that it was apparently the maximum number of barrels offered by each bidder, the top one being so many barrels of Portland cement and the figures underneath so many barrels of high early strength cement, and this date here (indicating) is apparently the expiration date of the offer.

Now, I know that through our custom in marking these.

Q. And all of that is subject to verification from the bids themselves, which you have produced, is that right?

A. Yes, sir.

Mr. Wooden: In that event, I want to include those pencil notations as a part of the offer of Exhibit 1878.

Trial Examiner Norwood: Yes.

The witness identified Com. Ex. 1880 as a tabula-
11862 tion of cement bids received by the Illinois Division of Highways on December 28, 1937 for cement to be used during the construction season of 1938. The pencil notations across the top under the name of each bidder, apparently, refer to the number of barrels offered in the bid. These figures are checkable against the bids which the witness brought in along with "this".

Mr. Wooden: I will now offer this Exhibit 1880, incluing those pencil figures at the top, and proffer for checking purposes the original proposals and specifications of the following companies: Lehigh, Alpha, Marquette, Universal-Atlas, Dewey, Lone Star, Missouri and Medusa.

11863 Mr. Wooden: Your honor, at Mr. Zimmerman's suggestion, and I might say upon his insistence, I am offering at this time the proposal and specifications submitted by the Lone Star Company on the bidding for the requirements of the State Highway Commission for 1938. It has been numbered 1881, for identification, and it relates to the abstract which is offered as Exhibit 1880.

Mr. Zimmerman: I object to counsel's statement that I ever suggested that he offer this particular one as a typical example. I haven't suggested the Lone Star

11864 and it may very well be that another one may be so considered by us.

Trial Examiner Norwood: Well, he has offered it as that. If it isn't that, you can show that. Go ahead.

Mr. Wooden: Will you mark that with the next number, please.

(The proposal and specifications of the Ash Grove Cement Company referred to were marked "Commission's Exhibit 1882," for identification.)

Mr. Wooden: In the same connection, and I will modify my statement to say that as the result of Mr. Zimmerman's insistence that a sample be offered, I am now offering the proposal and specifications of the Ash Grove Cement Company for the requirements of the State during 1937, and it relates to the abstract which is numbered as Exhibit 1879.

Trial Examiner Norwood: This paper is marked for identification Commission's Exhibit 1882?

Mr. Wooden: 1882, that is right.

Trial Examiner Norwood: And it relates to Exhibit, for identification, 1879?

Mr. Wooden: That is right.

Trial Examiner Norwood: Go ahead.

Mr. Wooden: Give this the next number, please.

11865 (The proposal and specifications of the Missouri Portland Cement Company referred to were marked "Commission's Exhibit 1883", for identification.)

Mr. Wooden: In the same connection I am offering the

original proposal and specifications of the Missouri Portland Cement Company, submitted on the requirements of the Illinois Highway Commission for 1936. This has been numbered 1883, for identification, and it relates to the abstract which is offered as Exhibit No. 1878.

I didn't take them exactly at random, but I took them so far as the states are concerned and the three different ones were all said to be the same.

Trial Examiner Norwood: Are there any objections to that particular offer?

Mr. Wooden: That brings it down to the moment, doesn't it?

Mr. Zimmerman: I think it does, except for the contract form.

Mr. Wooden: All right, we will have it.

Mr. Zimmerman: I take it that the witness would dig it up between now and tomorrow morning and give it to you.

Mr. Paulson: This is off the record, please.

Trial Examiner Norwood: Off the record.

11866 (A discussion ensued off the record.)

Mr. Wooden: I am now to the point of identifying the other abstracts that we want and going through the same procedure we have here now, but there will be some more general questioning regarding some of the other matters, some of the other abstracts.

Mr. Zimmerman: I don't think we can do all that tonight.

Trial Examiner Norwood: The point is, if you can present them now, they can take the abstracts and the supporting data to check them.

Mr. Wooden: I am willing to do so.

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

By Mr. Wooden:

Q. Mr. Hamlin, do you have here the abstracts for purchases during 1933?

A. Yes, sir.

Q. Will you produce those?

(The documents referred to were produced by the witness.)

Q. The 1932 and 1933 bids are so inter-connected, I think I will take 1932 also.

(Thereupon the documents referred to were produced by the witness.)

11867 Q. Are those two pages the same thing?

(Handing documents to witness.)

Q. Are they duplicates?

A. No, sir, they are not. I don't think so. One is for regular Portland cement and this (indicating) is for high early.

Mr. Wooden: Well, let's let the high early go. Will you mark that with the next number, please?

(The tabulation referred to was marked "Commission's Exhibit 1884" for identification.)

By Mr. Wooden:

Q. What is the paper marked Commission's Exhibit 1884 for identification, please?

(Handing document to witness.)

A. This is a tabulation of the cement bids received January 6th, 1932, by the Division of Highways of the State of Illinois for cement to be used during the year 1932.

Q. You have here the supporting data, consisting of the original bids from which this abstract is taken?

A. Yes.

Mr. Wooden: I will offer the abstract, Exhibit 1884, and proffer the original bids for checking purposes, consisting of proposals and specifications of Alpha of St. Louis, Alpha of LaSalle, Lehigh—

Mr. Leisure: What did you say, Alpha of—

11868 Mr. Wooden: Alpha of St. Louis, and it is marked "Alpha of LaSalle."

Mr. Leisure: Yes.

Mr. Wooden (continuing): —Lehigh, Marquette, Universal-Atlas, Dewey, Lone Star, Missouri, Medusa, Cosmos, Penn-Dixie, Louisville—and a Louisville duplicate is here also, Ash Grove, Northwestern States and Wabash.

Mr. Withrow: Are you going to offer one of those?

Trial Examiner Norwood: Let the one you offer as a sample there be Exhibit 1885.

Mr. Wooden: Mark that with the next number, please.

(The proposal and specifications of the Louisville Cement Company referred to were marked "Commission's Exhibit 1885", for identification.)

Mr. Wooden: I also offer as Exhibit 1885 the proposal and specifications of the Louisville Cement Company.

Among the supporting papers is a tabulation of the bids on high early strength cement, which I do not offer.

Mr. Leisure: Your honor, this tabulation is made up with pencil notations which cannot be photostated, and I don't know how we can handle that.

Trial Examiner Norwood: They can be traced in 11869 ink and be photostated.

Mr. MacIntyre: May we go off the record, please?

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood: Now, have you anything further to say about that letting, 1884?

Mr. Wooden: I don't know as it is necessary to say anything further, your honor.

Trial Examiner Norwood: Well, just pass it over.

Mr. Wooden: Well, I want to ask him another question on it before I forget it.

By Mr. Wooden:

Q. Are the pencil figures at the top, under the names of the respective bidders, do they mean the maximum quantity that they agreed to furnish, as in the other cases you have testified to?

A. Yes, sir.

Mr. Wooden: I will include those figures in my offer of Exhibit 1884.

11871 Chicago, Illinois,
December 7, 1938.

11872 CLARENCE A. HAMLIN resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Hamlin, will you look at Commission's Exhibit 1884, for identification, and then tell me whether another paper which I am now handing to you is an abstract that covers the same bidding or letting and to what extent it may be taken as a duplicate.

A. It is another tabulation similar to the first one.

Q. I note on this other paper that I am handing you—no, it isn't on that at all. On Exhibit 1884, for identification, the words "Check copy by J. H. M." appear. Can you say who that is, J. H. M.?

11873 A. That is Jackson H. McDonald.

Q. Who is he?

A. He was a clerk in our office at that time.

Mr. Wooden: Off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood: On the record,

Let the record show that the document just identified by the witness is substituted for the paper marked, for identification, as Commission's Exhibit 1884.

You may withdraw that other one.

Mr. Wooden: And I should also like to have the offer made subject to check with what was Commission's Exhibit 1884.

Trial Examiner Norwood: Yes.

(A tabulation was thereupon marked as Commission's Exhibit 1884 in substitution for a previous tabulation previously marked as Commission's Exhibit 1884.)

Mr. Wooden: And I would like to have it made the same as 1884 if any changes appear or any differences appear between the two.

The paper which was 1884 I shall put with the supporting data for checking purposes like the other data.

Mr. Zimmerman: That is 1884?

11874 Mr. Wooden: This is 1884 (indicating); that was 1884 (indicating).

The witness identified Com. Ex. 1886 as a tabulation of cement bids received February 3, 1932, by the Illinois Division of Highways for cement needed in construction during the year 1932. "This" is the original tabulation of the Highway Department; the witness was shown another paper, and asked to state whether the one marked "1886" is a duplicate of the one counsel is now showing the witness. The witness said that "this" is also an original. They are both originals. These tabulations are made simultaneously by three tabulators working together as the bids are

11875 read. He finds some differences in the pencil notations on the top under the names of the bidders so to that extent they are not absolutely identical papers. The pencil notation appearing on the duplicate original which the witness produced is the amount of barrels offered by each bidder, but the tabulator did not get them all in on this paper (indicating, Com. Ex. 1886). Probably he was not as fast a writer, and as a matter of fact, the tabulators had no instructions to do that in the first place. They did

that for their own convenience. The witness says that the notations on the top of the duplicate of 1886, which he has before him, were placed on there by the tabulators in his office.

Mr. Wooden: Then, your Honor, I would like to offer 1886, for identification, subject to check with the other copy. which the witness has produced here, and with the understanding or permission that the pencil notations may
11876 be made the same on 1886 as on the other copy that the witness has produced and which is submitted for checking purposes along with the original bids, which I believe you have here marked "February 3, 1932." Is that correct?

The Witness: Yes.

11877 Mr. Wooden: Will you mark this one "1886" in place of the other?

(The document referred to was marked as requested.)

Mr. Wooden: Your honor, because of the difficulty in pursuing the course that I just outlined, I would like to amend the offer to make Exhibit 1886, for identification, the paper which Mr. Hamlin, the witness, has produced, rather than the, you might say, pencil duplicate which I intended to substitute for it, so I believe that number which the reporter has placed on the paper produced by Mr. Hamlin, 1886, may be substituted.

Trial Examiner Norwood: Yes, erase the other marks. Erase the marks on the one heretofore marked.

Mr. Wooden: And for record purposes, the supporting data consists of the proposal and specifications of the Lehigh, Marquette, Universal-Atlas, Dewey, Lone Star, Missouri, Medusa, Cosmos, Louisville and Ash Grove.

As a sample of the proposal and specifications I am asking that the Dewey Company's proposal and specifications be given a number and I offer it in line with Mr. Zimmerman's suggestion of yesterday.

Trial Examiner Norwood: Mark it No. 1887, Commission's Exhibit.

11878 (The proposal and specifications of the Dewey Company above referred to were marked "Commission's Exhibit 1887", for identification.)

Mr. Wooden: Now, your honor, I would like to follow the same procedure with regard to Exhibit 1884 that I just followed with regard to 1886.

Trial Examiner Norwood: To make the substitution?

Mr. Wooden: In other words, reverse what I started to do and offer the original paper which the witness has produced rather than the copy which was in the Federal Trade Commission's files.

Trial Examiner Norwood: Well, give that to the reporter so they can erase their own marks.

11884 Q. Mr. Hamlin, I show you a paper marked for identification as Commission's Exhibit 1888. Will you state what it is?

(Handing document to witness.)

A. This is a tabulation of cement bids received by the Illinois Division of Highways on February 20th, 1933, for cement to be used in the construction during 1933.

Q. Is that the official abstract of the Highway Department?

A. Yes.

Q. And that reminds me. I want to ask you: Yesterday I used the term "Highway Commission of Illinois" quite a bit in my questions. Is that an error?

A. Yes, sir.

Q. Will you explain what the set-up is in Illinois for highway construction? First, is there a Highway Commission?

A. No.

Q. All right, what is there?

A. The engineering force of the State of Illinois in charge of highway construction is called the Division

11885 of Highways. This is a division under the Department of Public Works and Building, which is called a code department.

Q. Co-department?

A. Code department.

Q. Do the pencil notations across the top of this Exhibit, 1888,—were those placed on there as a part of the tabulation by those in your department who made it up?

A. They were placed on there by the tabulators, as I said before, without any definite instructions to do so. They represent the number of barrels offered by the cement companies as the bids were read.

11886 Mr. Wooden: I will offer Commission's Exhibit No. 1888, for identification, on the same terms and conditions as the previous offers, and submit for checking purposes the original bids produced by the witness consisting of the bid of Alpha, LaSalle, Alpha of St. Louis,

Lehigh, Universal, Dewey, Lone Star, Missouri, Medusa, Cosmos, Consolidated, Penn-Dixie, Louisville original, Louisville duplicate, Ash Grove, North Western, Hawkeye, and Wabash.

Give this a number, please.

(The paper writing above referred to was thereupon marked for identification as Commission's Exhibit 1889.)

Mr. Wooden: I also offer pursuant to Mr. Zimmerman's suggestion of yesterday the Hawkeye bid, which has been numbered, for identification, as 1889.

11887 Q. Mr. Hamlin, was it the practice in your department to figure out the average delivered prices in the various counties based on the bids that were received from time to time?

A. Yes.

Q. How were such averages worked out?

A. By taking the weighted average of all the bids received.

Q. The unit prices on all bids received?

A. Yes, sir.

Q. How was the weighted part of the average arrived at?

A. By multiplying the amount of barrels at each destination by the unit price, bring that out to an extension, and adding those extensions up and dividing by the total number of barrels.

11888 Q. Was such an average delivered price worked out on this February, 1933, bidding?

A. Yes.

Q. What was the average?

A. $1.62.

Q. Had a similar method of determining the average price of bids been worked out for 1932?

A. Yes.

Q. What was the average price then?

A. 92 cents.

11890 Trial Examiner Norwood: How is the average price relevant, anyway?

Mr. Wooden: Here, your Honor, in 1932 we had as the bids will show, and from my point of view, a competitive condition with the average price down to 92 cents, I believe the witness said, but I think he is wrong, 92 cents a barrel. Within less than a year, and at the bottom of the

depression, the prices, the average price went to $1.62.

11891 Trial Examiner Norwood: That was an average mill net?

Mr. Wooden: No. That was the average delivered price.

Mr. Paulson: May I add—

Mr. Wooden: The mill nets were lower than that.

Mr. Paulson: The '33 bids show the identical bidding.

Mr. Wooden: Yes.

Mr. Paulson: Then when they showed that, they were that much higher.

Mr. Zimmerman: Now, you see, we would have to take in the element of location, if they were from the same location, which might tend to prove something, but what we would have to take into consideration advances in freight rates, advances in costs of various sorts, and unless, certainly, you have the same locations, I don't see how you—

Mr. Wooden: You can show any of that that you can to offset the effect of this.

Trial Examiner Norwood: I suppose you can strike an average in a price territory. I think that they should show that, and then we can bring up the definite information. Objection overruled, and motion denied.

By Mr. Wooden:

11892 Q. Mr. Hamlin, are you sure in your answer about 92 cents being the average price for 1932, the average delivered price—are you sure of that?

A. I thought I was sure when I answered the question, but I prefer to consult the records.

11893 Q. Do you have the records here that would enable you to verify or confirm or correct your answer as to what was the average delivered price in 1932?

A. No, I don't believe they are here.

11894 Q. Mr. Hamlin, will you refer to your records and let us know whether the figure of 92 cents, the average delivered price in 1932, was correct; if not, what the correct price was?

Q. Mr. Hamlin, can you now say whether or not your figure of 92 cents, average delivered price in 1932, was correct?

A. Yes.

Q. What do you say regarding it?

A. It was 94 cents.

Q. Your figure of a $1.62 for 1933, was that correct?

Mr. Zimmerman: Did he say $1.63?

Mr. Wooden: $1.62.

A. That was correct.

Mr. Zimmerman: May I ask what he bases that on?

11895 Trial Examiner Norwood: Well, now, you can—

Mr. Zimmerman: Well, he has based it upon some written figures.

Trial Examiner Norwood: You can cross-examine him on that when the proper time comes.

Mr. Zimmerman: Oh, I think where a witness is making statements from some written figures, that it ought to come out in chief. It goes to the admissibility of the evidence.

Mr. Wooden: He has refreshed his recollection about it. If you want to see from what he refreshed his recollection, I have no objection.

Trial Examiner Norwood: Go ahead. Go ahead, Mr. Zimmerman.

Examination on Voir Dire by Mr. Zimmerman.

Q. Well, I may ask the witness: Did you actually make these figures yourself?

A. Which figures are you referring to?

Q. The average figures.

A. I had supervision over them. If I didn't make them myself, I was in charge of their production.

Trial Examiner Norwood: Did you check them?

The Witness: Yes, sir.

11896 Q. What is it you are refreshing your recollection from?

A. From the papers in charge of the counsel.

Q. Is this not the thing that you have been refreshing your recollection from, a newspaper release? Isn't it a press release?

A. I would have to see that before I can answer that question.

11897 (A paper writing was handed to the witness by Mr. Zimmerman.)

A. Yes, sir.

Q. And this says "Robert Kingery, Acting Director of

the Department of Public Works and Buildings, makes the following announcement."

That was something that Mr. Kingery got up, or did you do it?

A. Mr. Kingery's office did that.

11899 By Mr. Wooden:

Q. Mr. Hamlin, upon receipt of these bids, in February, 1933, did the Department of Highways make awards on them or what did it do?

A. They were rejected.

Q. Can you say why?

A. No, sir.

Q. Were bids re-advertised?

A. Yes, sir.

Q. Who would know why they were rejected?

A. Mr. Kingery, director of the Department of Public Works and Buildings at that time.

Mr. Wooden: Mark this with the next number, please.

(The tabulation referred to was marked "Commission's Exhibit 1890," for identification.)

By Mr. Wooden:

Q. What is the paper I show you, marked 1890, for identification?

(Handing document to witness.)

A. This is a tabulation of cement bids received by the Illinois Division of Highways on March 27th, 1933, for cement to be used in construction during the year 1933.

Q. Is that a tabulation of the bids resulting from

11900 the re-advertising you have mentioned?

A. Yes.

Q. And are the pencil notations at the top under the names of the bidders the work of the tabulators in the Highway Department?

A. Yes.

Q. And taken from the bids?

A. They were set down as the bids were read. Those notations are contained in the proposals and the man that read the bid read them off and the tabulators set them down.

Q. I note at the very top, over the word "Alpha," the words "sales tax to be made on shipments by bidder." Do you know what that means?

A. That was the information contained in the proposal;

which the reader read at the time the bids were read and which the tabulator set down.

Q. Does that mean state sales tax?

A. Yes, sir.

Mr. Wooden: I offer this Exhibit 1890 with the same conditions as previous offers of a similar sort, and proffer for checking purposes the original bids which the witness has produced, consisting of the proposal and specifications of Alpha—LaSalle, Alpha—St. Louis, Lehigh, Marquette, Universal-Atlas, Dewey, Lone Star, Missouri, Medusa, Cosmos, Consolidated, Penn-Dixie, Louisville,
11901 Ash Grove, Wabash, Northwestern and Hawkeye.

Will you mark this with the next number, please.

(The proposal and specifications of Penn-Dixie Company referred to were marked "Commission's Exhibit 1891," for identification.)

Mr. Wooden: I also offer, pursuant to Mr. Zimmerman's suggestion, Exhibit 1891, consisting of the original bid of the Penn-Dixie Company.

These are all pending, that is, judgment is reserved or ruling reserved?

Trial Examiner Norwood: Oh, yes.

By Mr. Wooden:

Q. Can you tell us, Mr. Hamlin, whether any awards were made as the result of the March 27, 1933 bidding?

A. No awards were made.

Q. Does that mean that the bids were rejected, or what?

A. They were rejected.

Q. Do you know why in that case?

A. No.

Q. Who would know?

A. Mr. Robert Kingery, the Director of the Department of Public Works and Buildings at that time.

Q. Was there a re-advertisement for bids following that rejection of the March 27th, 1933 bids?

11902 A. Yes.

Q. On what date?

A. On April 12th, 1933.

Mr. Wooden: Will you mark this with the next number, please?

(The tabulation referred to was marked "Commission's Exhibit 1892," for identification.)

By Mr. Wooden:

Q. What is the paper I show you marked Exhibit 1892, for identification?

(Handing document to witness.)

A. This is a tabulation of the cement bids received by the Illinois Division of Highways on April 12th, 1933, for cement to be used in the construction during 1933.

Q. Is that the official abstract based on the bids as received?

A. Yes.

Q. And are the pencil notations at the top from the same—or, were they put on in the same way that the other pencil notations were that we have had on other abstracts?

A. Yes.

Mr. Wooden: I offer Exhibit 1892 and submit for checking purposes the original proposals and specifications, including Alpha—Missouri—of St. Louis, I take it, Alpha—

11903 St. Louis, Alpha—LaSalle, Lehigh, Marquette, Universal, Dewey, Lone Star, Missouri, Medusa, Cosmos, Consolidated, Pennsylvania-Dixie, Louisville, Ash Grove, Northwestern, Hawkeye and Wabash.

Will you mark this with the next number, please.

(The proposal and specifications of the Consolidated Company referred to were marked "Commission's Exhibit 1893," for identification.)

Mr. Wooden: I offer in that connection, and at the suggestion of Mr. Zimmerman of yesterday, Exhibit 1893, which is the proposal and specifications of the Consolidated on this same bidding.

By Mr. Wooden:

Q. Were any awards made as the result of the bidding of April 12th—is that it—April 12th, 1933?

A. There were none.

Q. Were the bids rejected?

A. Yes.

Q. Do you know why in that case?

No.

11904 Q. In the bidding of April 12th, 1933, Mr. Hamlin, did the State ask for bids on an F. O. B. mill basis?

A. Yes.

Q. Was that asked for solely on that basis or on an alternate basis?

A. On an alternate basis.

Mr. Zimmerman: I think we ought to have the invitation itself.

Mr. Wooden: That is here, Mr. Zimmerman.

Mr. Zimmerman: Well, all right, I think it ought to be offered in evidence.

Mr. Wooden: I have, in Exhibit 1893.

Mr. Zimmerman: Well, then, you are asking now for the contents of it, aren't you?

Mr. Wooden: I didn't make any reference to the contents at all. I asked the witness of his own knowledge what he knew about it.

Mr. Zimmerman: Well, what they asked for is
11905 contained in the written invitations. I have no objection: if they want to go into it orally, it is all right.

Trial Examiner Norwood: If counsel objects, I shall sustain it.

Mr. Zimmerman: I shall not object.

Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Did the State receive any bids on an F. O. B. mill basis as a result of that invitation?

A. It did not.

Q. Is that the only time that you know of where the State ever asked for bids on an F. O. B. mill basis?

A. That is the only time I ever know of.

Q. Do you believe that you would have known of it if it had occurred at other times during your connection with the department?

A. Yes.

Mr. Wooden: Will you mark those with the next two numbers?

(The letters referred to were marked "Commission's Exhibit 1894 and 1895-A and B," for identification.)

Mr. Wooden: Your honor, I will offer at this time two papers, marked 1894 and 1895, for identification, and subject to check by respondents. They consist of a letter or a copy of a letter from the Governor of Illinois to
11906 President J. B. John of the Medusa Portland Cement Company, it is a photographic copy of such a letter, and a photographic copy of the original by Mr. John in reply thereto. I offer it subject to check from such sources as respondents may find desirable.

Trial Examiner Norwood: Any objection?

Mr. Wooden: Will you mark these with the next numbers, please?

(The letters referred to were marked "Commission's Exhibits 1896, 1897 and 1898," for identification.)

Mr. Leisure: Your honor, we have no objection to these letters, with this understanding: There is apparently another letter of this series which is not in evidence, and we will ask permission to put that letter in as a part of this series. Mr. Wooden says this is signed by the Governor. That isn't shown to be signed, but we will make no objection—

11907 Mr. Zimmerman: I have no objection.

(COM. EXS. 1894 and 1895-A and B were offered and received in evidence.)

Q. Mr. Hamlin, what, if any, further efforts were made after the April, 1933 bidding to obtain cement from mills, I mean during 1933?

A. Another letting was advertised to be held on

11908 June 5th, 1933.

Q. And were bids received?

A. No, sir, the invitations to bid were recalled.

Q. How much cement was the Highway seeking to buy at that time, or during the spring of 1933?

A. I do not recall without referring to the records.

Q. Would the invitations sent to the various bidders show that?

A. Yes, sir.

11909 Q. Can you now say what the amount was?

A. Yes.

Q. What was it?

A. 3,300,000 barrels.

Q. Did the Highway Department make anything in the nature of counter-offers to cement mills, following the rejection of the April 12th bids?

A. Yes.

Q. What sort of a counter-offer was made?

A. Invitations were made by telegram by the Director to all the bidders offering them $1.10 mill net for their cement.

Q. Was that offer made to all bidders?

A. Yes.

Q. What was the result of such an offer?

A. They were all refused.

Q. Showing you papers marked Exhibits 1896 and 1897, for identification, can you say what they are?

(Handing documents to witness.)

A. This is a copy of the telegram sent by Robert Kingery, acting director, to the Universal-Atlas Cement Company, covering the invitation I have just answered.

Q. Containing the offer of $1.10—

A. Yes, sir.

11910 Q. —mill net. Is that the form in which the same offer was made to other bidders?

A. That is the form, but the amount offered is variable.

Q. And Exhibit 1897, do you know anything about that?

A. I can't identify that.

Mr. Wooden: Well, I will offer Exhibits 1896 and 1897, subject to check with the Universal-Atlas Company, to whom one was addressed, and from whom the other appears to have been received.

11911 Trial Examiner Norwood: Any objection?

Mr. Zimmerman: No.

(COM. EXS. 1896 and 1897 were offered and received in evidence).

Mr. Wooden: I would also offer on the same basis at this time, that is, subject to check, the exhibit marked "1898", for identification, purporting to be a copy of a letter from A. E. Hjerpe of the Consolidated Company to Robert Kingery, acting director, Department of Public Works, dated June 2, 1933.

Mr. Leisure: Is this another copy of something that is already in the record? These telegrams just offered are in the record already.

Mr. Wooden: I think not. I think that is not. I wasn't aware that the others were. Of course, I have no desire to duplicate things unnecessarily.

Trial Examiner Norwood: Any objection?

Mr. Leisure: No objection.

Trial Examiner Norwood: Any objection?

11912 Mr. Zimmerman: Just a moment. No objection.

(COM. EX. 1898 was offered and received in evidence.)

Q. What are the two sheets I show you marked 1899-A and B for identification?

A. That is the tabulation of the cement bids received by the Illinois Division of Highways on March 22, 1929, cement to be used in construction during the year 1929.

Q. Are those pencil notations across the top made in the same way that the others that you have described were made? In other words, they were made by the tabulators?

A. Not all of them. I recognize the notations here made by Mr. Hathaway, the engineer of construction.

Q. Which ones are those?

A. In which it says in ink "Entire amount 3,000,000 barrels."

Q. That is under the head of "Marquette;" is it?

A. Yes, sir.

Q. What does that mean "Entire amount 3,000,000 barrels"?

A. I do not know.

Mr. Wooden: I offer 1899-A and B, for identification, and proffer for checking purposes the original bids from which they were made, consisting of Alpha, Lehigh,
11913 Marquette, Universal, Atlas, Lone Star, Lone Star Indiana, Lone Star Kansas, Missouri, Sandusky, Louisville, Cosmos—there seem to be two for Cosmos here; at least two in the same envelope. Yes, there are two for Cosmos—North Western, Ash Grove, Dewey, Consolidated, Monarch, Hawkeye, Pyramid, South Western, Penn-Dixie.

Give this the next number, please.

(The documents above referred to were thereupon marked for identification as Commission's Exhibits 1900.)

Mr. Wooden: I also offer as Exhibit 1900 the original bid of the Monarch Company, to meet the suggestion of Mr. Zimmerman of yesterday.

Give this a number, please.

(The paper referred to was thereupon marked for identification as Commission's Exhibit No. 1901.)

By Mr. Wooden:

Q. What can you tell us about the paper I hand you marked as Exhibit 1901, for identification?

A. This is a map showing the base mill territories in 1933.

Q. Do you know anything about the authorship or how the map was made up, and where?

A. This was made in the Bureau of Construction, Division of Highways.

11914 Q. Can you say when and under what circumstances and by whom?

A. This was made by Mr. D. E. Dunseth.

Q. Who is he?

A. He was in charge of cement in 1933.

Q. Do you know whether making such maps was done more or less frequently in the department or not?

A. Yes, it was always—always has been done.

Q. For what purpose?

A. To determine the basing territory.

Q. What do you mean by the basing territory?

A. The territory over which the basing mill controls the price of cement.

Q. The delivered price, you mean?

A. Yes.

Q. Did you have in your department information that enabled you to determine what the territory controlled by a given basing mill was or how did you determine it?

A. We had no information of record in our office specifying basing points. We do know that that exists, however.

11915 Q. How do you know it?

A. From experience.

Q. Well, what experience?

A. We know from an analysis of the delivered price of cement as bid by the cement companies.

Q. You mean by that—

A. That taking the tariff rate from the basing point to the destination, you will arrive at a rate which has been established at the basing point, which are all identical to all destinations.

Q. This Mr. Dunseth whom you say made up this map, was he experienced in freight rate matters?

A. Yes, he was a freight rate clerk.

Mr. Wooden: I will offer that 1901 in evidence.

Examination on Voir Dire by Mr. Leisure.

Q. Mr. Hamlin, when you mentioned your experience, you mean that this map is drafted as a result of the bids that you received, and that is the way they are figured back? Is that what you meant by experience?

A. Yes, sir.

11916 Mr. Zimmerman: Now, I would like to ask the witness a question on the record, if I may.

Trial Examiner Norwood: Go ahead.

By Mr. Zimmerman:

Q. This was figured out by one of the men in your department for the use of the Highway Commission.

A. Yes.

Q. That is your department?

A. Yes.

Q. And done independently, just based entirely upon the figures that you had available in the department?

A. Yes.

Q. And not based upon any information given from outside at all? I mean, nobody told you that these were the basing points, but you figured it out from the prices that had been bid?

A. Yes.

Q. And the freight rates that you got out of the railroad tariffs?

A. Yes.

Mr. Zimmerman: All right, thank you.

Mr. Leisure: Subject to checking, we have no objection.

Trial Examiner Norwood: Received as marked.

11917 (COM. EX. 1901 was offered and received in evidence.)

11920 *Cross-Examination by Mr. Leisure.*

Q. Mr. Hamlin, you produced certain tabulations here that were submitted by you in evidence. Were those all of the bids for the manufacturers covering the period of the last ten years or did you make certain selections?

A. The selections were made by the Commission's counsel of the tabulations that I was to bring here to this trial.

Q. It did not cover all of the bids, then?

A. Over the past ten years, no.

11926 Q. Now, taking up another subject, Mr. Hamlin, I understood you to say that the contractors submit bids for construction jobs; is that correct?

A. Yes, sir.

Q. And in their bids do the contractors indicate the amount per barrel?

A. Yes, sir.

Q. Which they are charging the state for the cement?

A. Yes, sir.

11927 Q. Let me ask you: Did you purchase from contractors in 1932?

A. No, sir.

Q. You did not? What about 1933?

A. No.

Q. '34 was your first year?

A. Yes.

11953 Trial Examiner Norwood: The exhibits which the Commission has proffered, Nos. 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1889, 1891, 1893, 1899 and 1900, are received as marked by agreement of all counsel.

(COM. EX. 1878, 1879, 1880, 1881, 1884, 1882, 1883, 1885, 1886, 1887, 1889, 1891, 1893, 1899-A and B and 1900, were offered and received in evidence.)

11954 (COM. EX. 1888, 1890 and 1892 were offered and received in evidence.)

11964 By Mr. Zimmerman:

Q. You haven't, Mr. Witness; any intention of leaving the impression with the Commission that the bids of the several cement companies were identical every year from 1929 down to date, have you?

A. I have no desire to leave any impression.

Q. Well, is that the fact, in your opinion?

11965 A. If—in a direct way, are you asking me if it is my opinion that all these bids were identical from 1929 to date?

Q. From your knowledge of the subject.

A. They were not.

Q. Do you know of any year or any particular letting that you can point out where they were? Can you remember any year?

A. Yes, sir.

Q. Now, what year was that?

A. 1936 and '37.

11966 Q. Take 1931, the year for which they didn't put in any exhibits. Can you tell us whether the bids were identical for the same destinations that year?

11967 A. I note that some of these bids are not identical.

11968 By Trial Examiner Norwood:

Q. They are not all identical. Were there any identical bids for 1931?

A. There are some identical bids for 1931.

Q. How many?

A. In Adams, I find that Lehigh and Marquette, Universal-Atlas, Dewey, Missouri, Medusa, Penn-Dixie submitted an identical bid of $1.87.

By Mr. Zimmerman:

Q. And what companies submitted any different bid?

A. Alpha submitted $1.88, Lone Star submitted $2.05 and Consolidated submitted $2.32, and Ash Grove $2.16.

Q. So that there was considerable variance as between the several companies, wasn't there?

A. Yes.

Q. And that is true for most every county, is it not?

A. That appears to be so.

11976 Q. I will ask you to look at this document, which has been marked for identification Respondents' Exhibit 61-A, B and C, and state whether or not that is the document that we had reference to in asking about these figures?

(Handing document to witness.)

A. Yes, sir.

11977 By Trial Examiner Norwood:

Q. And from which you refreshed your memory on yesterday?

A. Yes.

Mr. Wooden: This morning.

By Mr. Zimmerman:

Q. Now, then, did you look at this document before you came on the witness stand?

A. Yes.

11978 Mr. Wooden: I object to the figures whether read or in any other form.

Mr. Zimmerman: I will offer the document in evidence as Respondents' Exhibit 61-A, B and C.

Trial Examiner Norwood: The objection is overruled and it is received in evidence as marked.

(RES. EX. 61-A, B and C was offered and received in evidence.)

11979 Q. Do you know anything about the general commodity trend of prices during the year 1932 and 1933? Let me put it this way. I will withdraw the question.

Did you not know that as a matter of fact the general

business index for all commodities went up very rapidly from the early part of 1933 to about the middle of that year?

A. Yes.

11980 Q. I see. For the purpose of showing the custom of the State of Illinois as to all of the years, what is the fact as to whether or not the policy and custom was to include in all invitations and specifications upon which contracts were based a provision which protected the State of Illinois as to any decrease in the market at the destinations where they were buying cement?

A. The contract provides if there is any reduction made by any cement company in the market price at any particular destination, that the State of Illinois will be at once granted the same reduction.

Q. And that market price meant what, the market price to dealers?

11981 A. Yes, sir.

11982 Q. Mr. Hamlin, showing you Respondents' Exhibits 61-A, B and C, do you know of your own knowledge what that paper is?

A. No, sir.

Q. Have you seen it before today?

A. No.

Mr. Wooden: Your Honor, I move to strike from the record the Respondents' Exhibit 61-A, B and C, on the ground that it hasn't been identified by the witness.

Trial Examiner Norwood: Counsel used it in examining this witness and gave it to him to refresh his memory, and I don't think counsel can object by reason of lack of identification.

Mr. Wooden: At any rate, I am making the motion to strike now on that ground.

Trial Examiner Norwood: Motion denied.

Mr. Wooden: I offer in evidence at this time, Your Honor, papers marked "Commission's Exhibits 1902-A and B" which purport to be a release, a press release in connection with these bids, and which contain also the same tabular statement of average prices which

11983 appear in the other document, Respondents' Exhibit 61-A, B and C.

Trial Examiner Norwood: Any objection?

Mr. Leisure: Yes, Your Honor. With respect to 1902-

A and B, it appears to be a photostat of some newspaper clipping. It is without probative value. It has not been identified in any way. It is not binding upon any of the respondents. I object to it as incompetent, irrelevant and immaterial.

Trial Examiner Norwood: Any further objection?

Mr. Zimmerman: Yes. There has been no proper identification for it. It doesn't have any bearing upon anything here at all.

Mr. Wooden: Your Honor, it has the same bearing on the matter that the previous exhibit, Respondents' Exhibit 61-A, B and C, had, and it has exactly the same standing here as to identification. I am now offering the other one.

11984 Trial Examiner Norwood: Now, the objection is sustained.

Q. Mr. Hamlin, I believe you said in answer to a question by Mr. Leisure, that you had in mind certain specific destinations where you also had in mind the comparative prices for cement both direct by the state and the

11985 prices charged to the state by contractors; is that right?

A. Yes.

Q. I am asking you to state what those destinations were and what the prices were you had in mind.

A. I cannot state that the exact destinations are the facts in regard to that comparison in prices, but it is my recollection and experience that the contractors' prices varied from one to ten cents and maybe more over the regular market price of cement at that same destination.

Q. Market price as quoted by the mills, you mean?

A. Quoted by the mills to the state.

Q. On direct purchases?

A. Yes.

11987 Chicago, Illinois,
December 8, 1938.

11989 PHIL. RUNION, called as a witness on behalf of the Commission, being first duly sworn testified as follows:

Direct Examination by Mr. Wooden.

11990 I am secretary of the Nebraska Lumber Merchants Association and have been in that position since August 1933 down to date. It is an association that represents the retail lumber industry in the State of Nebraska. Its membership is composed of retail lumber dealers who frequently or ordinarily buy and sell cement. I would say the greater portion of our membership handle various sized amounts of cement.

Q. Is your membership confined to the State of Nebraska?

A. Yes, sir.

Q. Is your organization affiliated in some sort of a national organization of lumber dealers?

A. Yes, sir.

Q. In what way?

A. We are affiliated as a member of the National Retail Lumber Dealers Association.

11991 Q. Do other members of the National Association consist of similar associations of retail dealers in other sections of the country?

A. Yes, sir.

Q. Can you name some of those that you are familiar with as members of the National?

A. The Northeastern Lumbermen's Association.

Q. Give the location, if you please.

A. The headquarters are in Rochester, New York, representing an area of some place in the New England States.

The Northwestern Lumbermen's Association, headquarters in Minneapolis, representing—I think that association represents Iowa, Minnesota, and the two Dakotas.

Q. Is Mr. Bell the secretary of that Association?

A. No, sir.

Q. Who is?

A. Mr. Lance, O. C. Lance.

Q. Is Mr. Bell the secretary of some similar organization?

A. Yes, sir.

Q. Which one is that?

A. The Western Retail Lumbermen's Association, I believe is the proper name.

Q. Where is that located?

A. That is in the northwestern part of the country—of the United States, I think. I believe their offices are in Seattle.

11992 Q. All right. What others in the Middle West that you are familiar with as members of the National?

A. Southwestern Lumbermen's Association, Kansas City; representing Kansas, Arkansas, Oklahoma and Missouri, I believe is the area.

11993 Q. Has the subject of what classes of trade properly belong to the dealers and what classes of trade properly belong to the dealers and what classes of trade properly belong to manufacturers been considered either in your Nebraska association or in the National?

A. In our Nebraska association, yes.

Q. What about the National?

A. I don't recall ever having attended a National meeting where the subject was discussed.

Q. Have you attended any meetings at which the subject was discussed with cement manufacturer representatives?

A. Yes, sir.

Q. Will you state where and when?

A. In Chicago. I believe the meeting was in the forepart of 1934; '34.

Q. That was during the Code days?

A. Yes.

Q. NRA Code days?

A. Yes.

Q. You say that was in Chicago?

A. Yes, sir.

Q. Who were present that you recall?

A. Oh, there were innumerable people present, a few of whom I knew, having never attended a meeting of that kind or of that nature before.

Q. Among those that you knew, who were present?

11994 A. I believe of our own people, Mr. Hanson.

Q. By your own people you mean the Nebraska association people?

A. That is right.

Q. Is that A. T. Hanson?

A. Yes, sir.

Q. Was he a member of your Trade Relations Committee?

A. Yes, sir.

Q. All right.

A. Others that I can recall would be—I think Mr. Lance was present.

Q. Representing North Western was that?

A. Yes, sir. And the others I might recall if I heard the names. I might recall who they were, but not having met any of them before—

Q. Was there a Mr. Woods representing South Western there?

A. Secretary of South Western.

Q. Was he there?

A. I rather think so. I cannot definitely say.

Q. Do you remember any other dealers' association representatives?

A. I can't. Undoubtedly there were many there. It seems as though—I believe a Mr. Dodson from Minneapolis.

Q. Who is he?

A. A lumberman from Minneapolis.

11995 Q. Was there an Adolph Fund of the Illinois Lumber and Material Dealers Association there?

A. I don't recall.

Q. Was Mr. George LePoint from Menominee, Wisconsin, there?

A. I don't recall him, either.

Q. Was there a representative of the National Retail Lumber Dealers Association there?

A. Not to my knowledge.

Q. Was there a representative of the Wisconsin Retail Lumber Dealers Association there?

A. If there was, I imagine it would have been their secretary. I know no lumberman from Wisconsin.

Q. Do you know the secretary? Was it Mr. Mongomery?

A. I know the gentleman, yes, sir.

Q. Was he there?

A. I am assuming he was. I couldn't say definitely, either.

Q. Was there a representative of the Chicago Retail Lumber Dealers Association there?

A. If there was, I wouldn't know the gentleman.

Q. Do you know the Ohio Association secretary?

A. Do I know him?

Q. Yes.

A. Yes, sir.

Q. Was he there?

11996 A. I can't recall whether he was or not.

Q. Is that Mr. Torrence?

A. Finley Torrence.

Q. Yes. Was Allen Flint of the Mountain States Lumber Dealers Association there?

A. That I couldn't say.

Q. Was a representative of the Michigan Lumber Dealers Association there?

A. I rather think the secretary of that association was in attendance.

Q. Who is he? Mr. Gaines?

A. Hunter Gaines.

Q. Hunter Gaines?

A. That is right, Hunter Gaines.

Q. Was a representative of the Indiana Lumber and Builders Supply Association there?

A. That I couldn't say.

Q. Do you know him?

A. Roland Slagle.

Q. You don't remember whether he was there or not?

A. I couldn't say, no, sir.

Q. Now, you placed this meeting at Chicago as being sometime in the early part of 1934. I am showing you a paper which has been marked as Commission's Exhibit 461, for identification. Is that a photostat of a cir-

11997 cular issued by you and bearing your signature?

A. Yes, sir.

Q. Does that lead you to change your testimony as to the year in which this meeting was held that you refer to?

A. I would change it to 1935.

Q. Can you state on what date in '35 the meeting was held?

A. March the 19th.

Q. Now, who was there representing the cement manufacturers?

A. There was only one man that I can definitely recall his name, having never met any of them before, was a Mr. Rader.

Q. How do you spell it?

A. R-a-d-e-r.

Q. Is that Mr. B. H. Rader?

A. I don't know his name.

Q. Was he a representative of the Lehigh?

A. Yes, sir.

Q. Did you also know him as—

Mr. Leisure: Oh, I object to this continual leading now. The witness doesn't need to be led. He can tell us what he saw.

Trial Examiner Norwood: I think he can frame the questions a little more satisfactorily.

By Mr. Wooden:

Q. Was there anyone there representing the 11998 Code Authority of the cement industry?

Mr. Leisure: Now, if your Honor please, he can tell us who was there, and, if he knows, who they were representing. He can say so. But to ask him whether they were there representing certain people without anything preliminary to it, I object to it.

Trial Examiner Norwood: He may state what he knows, whether there was any one there who purported to represent these various ones. I think so. Objection overruled.

Mr. Wooden: You want the question read?

The Witness: Please.

(Question read.)

A. Not to my knowledge.

By Mr. Wooden:

Q. Can you say whether a man by the name of George H. Reiter, R-e-i-t-e-r, was there?

A. I don't—I couldn't say. I don't know the gentleman.

Q. About how many people were there?

A. In that meeting, I would say 50, approximately.

Q. Pardon me?

A. Approximately 50 I would gather were in attendance.

Q. About how many of those were manufacturer representatives as distinguished from dealer representatives?

A. Well, if I would be allowed to hazard a guess,
11999 I would say 15 per cent.

Q. Fifteen manufacturers?

A. Yes.

Q. Would you say seven or eight manufacturers, then, out of the fifty?

12001 A. Do I answer it?

By Mr. Wooden:

Q. Yes.

A. I would assume about that many.

By Trial Examiner Norwood:

Q. You mean that is the best of your recollection?

A. Yes, sir, the best of my recollection.

Q. You have a definite impression that there were that many there?

A. Well, the meeting, your honor, was so long ago it is difficult for me to recall the number of the attendance, but to the best of my recollection I woould say there were about that many representatives in attendance.

By Mr. Wooden:

Q. Was anyone there purporting to represent the Cement Institute?

A. Not to my knowledge.

Q. I am going to ask you as to a list of names, and if you remember that any of them were there, will you so indicate, please?

A. Yes, sir.

Mr. Leisure: I object to that form of leading question.

Mr. Wooden: What is leading about it?

12002 Mr. Leisure: You are asking him if certain people weren't there.

Trial Examiner Norwood: Don't you have a list of names here in some of the exhibits?

Mr. Wooden: That were there?

Trial Examiner Norwood: That the witness can look over and refresh his memory from?

Mr. Wooden: If I had a list of those that were present at this meeting, I wouldn't be asking the witness about it, your honor.

Mr. Paulson: Wouldn't this amount to just refreshing his recollection rather than being leading?

Trial Examiner Norwood: I think counsel has a right and I shall permit him to lead him to that extent in probing his memory in regard to this meeting that was some years ago.

Go ahead.

Mr. Leisure: The point of my objection is the witness has already testified on the subject. Even if counsel had a right to examine him in this way in the beginning, he has covered that field. The witness has said the only representative he recollects being there is Mr. Rader, and that covers it.

Trial Examiner Norwood: But he proposes to read out some names and to see if this witness remem-
12003 bers whether they were there or not. I think he would be allowed to do that to a limited extent.

Mr. Wooden: I see nothing leading about the question.

Trial Examiner Norwood: He has already named a few and asked him about them specifically. Go ahead.

By Mr. Wooden:

Q. Were any of the following parties present, as you recall, Mr. Runion: J. B. Cabanis of the Northwestern Portland Cement Company?

A. I don't know the gentleman.

Q. C. B. Condon of the Hawkeye?

A. I don't know him.

Q. O. C. Hunt with the Penn-Dixie Company of Des Moines?

A. I know him, but I can't recall his having been there.

Q. L. J. Capen of the Dewey Company at Davenport?

A. I don't know him.

Q. F. E. Tyler of the Dewey Company at Kansas City?

A. I don't know that I know him.

Q. H. O. Warner of the Nebraska Cement Company from Denver?

A. I don't recall his having been there.

Q. I should like to have you, in case you remember any representative of any company that I name, but whose individual name I do not give, I wish you would include that in your answer.

12004 (Continuing) L. T. Sunderland of the Ash Grove Company?

A. I don't know Mr. Sunderland. You are asking as to the Ash Grove Company. Mr. Rockwell was in attendance at that meeting.

Q. How do you spell that name?

A. R-o-c-k-w-e-l-l.

Q. And who is he?

A. Sales manager for the Ash Grove Cement Company.

Q. Located where,—Kansas City?

A. At Omaha.

Q. At Omaha. Mr. A. J. Rooney of the Huron Company?

A. I don't know him.

Q. Mr. A. C. Cronkrite of the Universal-Atlas Company?

A. I don't know that gentleman.

Q. O. H. D. Rohmer, R-o-h-m-e-r, of the Universal-Atlas Company?

A. I don't recall his having been there.

Q. Edward Quebbeman of the Universal-Atlas Company?

A. I don't know him.

Q. J. B. Scoville?

A. Who?

Q. Scoville, of the Universal-Atlas?

A. I don't know him.

Q. F. L. Stone of the Universal-Atlas?

12005 A. I don't know him.

Q. A. M. Fellows of the Alpha Company?

A. I don't know him.

Q. C. R. Smith of the Alpha Company?

A. I don't know him.

Q. F. L. Jaeger of the Marquette Company?

A. I don't know him.

Q. V. S. Colburn of the Marquette?

A. I don't know him.

Q. W. A. Wecker of Marquette?

A. No, sir, I don't know him.

Q. Mr. Ben Affleck of the Universal?

A. What name?

Q. Affleck?

A. I don't know him.

Q. J. B. John of Medusa?

A. I don't know him.

Q. Ben Wallis, W-a-l-l-i-s, of the Lone Star Company of Kansas City?

A. I don't know him.

Q. Who presided at this meeting that you referred to?

A. I believe such presiding as there may have been was by Mr. Dobson of Minneapolis.

Q. And who is he?

A. John Dobson of the J. F. Anderson Company.

12006 Q. All right. Then tell us what the subject of discussion was.

A. The distribution of cement.

Q. Well, what do you mean by that?

A. The object we retailers had in mind was the hopes that we can participate in the sale of all cement in the territories in which our dealers does business. That is our ambition, and the purpose of the meeting was to endeavor to sell these manufacturers of cement on that particular idea.

Q. In the course of the discussion on that subject, did the question of a proper mark-up for the dealers come into the discussion?

A. No, sir.

Q. In the course of that discussion did the classes of business which the dealers thought should be handled by them and the classes which the dealers thought the

12007 manufacturers might handle direct come into the discussion?

A. Yes, sir.

Q. Did the dealers make progress in selling their ideas on the subject to the manufacturers?

A. Not as satisfactory as we would have liked to have had it.

Q. Did you make some progress, though?

A. I would say so.

By Trial Examiner Norwood:

Q. What was done?

A. As I previously stated, our ambition in a meeting of that type was to secure as much as possible of the cement business in the areas in which these dealers operated.

Q. Now, we are asking you what was accomplished towards those ends.

A. We presented our proposition as to what we would like to have, which was all; we felt the dealers should participate in all of this business.

At that particular meeting, when I say progress
12008 was made, it was more of our submitting what we would like to have. It was a general discussion of what our ambitions were along the lines of the selling of cement, and I could not say that progress was made, any definite progress was made at that particular meeting. We submitted our requests.

By Mr. Wooden:

Q. You mean that you submitted your requests for the consideration of the manufacturers?

A. We submitted our requests to the manufacturers that we would like to participate in the sale of as much cement as we possibly could.

By Trial Examiner Norwood:

Q. Now, what did the manufacturers do about it?

A. They took it under advisement at that meeting.

Q. Did you have any committees appointed, or anything like that?

A. If there were any committees appointed at that time, I don't know. I was not serving on any of them.

Q. Any resolutions adopted?

A. No, sir.

By Mr. Wooden:

Q. Were any committees appointed prior to the meeting to deal with the subject of the meeting, make a report, or anything of that kind?

A. Not to my knowledge.

12009 Q. Did you discuss with the manufacturers on that occasion the specific classes of trade which you thought should be properly handled by the dealers?

A. Yes, sir.

Q. Did the manufacturers shortly after this meeting send out announcements to their trade covering the subject matter that you discussed at the meeting?

A. They later—later statements were received in our office from various cement manufacturers stating how they proposed to market their cement.

By Mr. Wooden:

Q. And are you aware whether or not they also sent such statements to their individual dealer customers?

12010 A. Yes, to my own knowledge, there was a general circulation of this proposal, of how they proposed to market their cement, sent out to the trade.

Mr. Wooden: Will you mark that with the next number, please.

(The letter referred to was marked "Commission's Exhibit 1903", for identification.)

By Mr. Wooden:

Q. Referring again to the meeting that you have been testifying about, Mr. Runion, who acted as secretary of the meeting?

A. I don't think there was a secretary appointed at the meeting. This meeting was more, in my opinion, of a round-table discussion, very informal.

Q. Was anyone designated to take or did anyone take a record of the proceedings of that meeting?

A. Not to my knowledge.

12011 Q. Was there any committee appointed to carry on the discussions that occurred at the meeting or to put them into concrete form?

A. Not to my knowledge, no, sir.

Q. Was any vote taken at the meeting on any of these subjects that were discussed?

A. No, sir.

Q. Were the proceedings of the meetings sent out, so far as you know, distributed?

A. I never saw any.

Q. Can you say where in Chicago the meeting was held?

A. Palmer House, I believe.

Q. How long did it last?

A. I am assuming in total probably three or four hours.

Q. Can you say who called the meeting?

A. Who issued a notice of the meetings; is that the question?

Q. Yes.

A. No, sir.

Trial Examiner Norwood: How did you know about it?

The Witness: Well, I don't recall, your Honor, at the time what definite information we had of this meeting. If you will permit me to explain, that much of my lack of knowledge of this particular meeting was due to my having been comparatively new in the game.

12012 I was not an important factor at the time.

By Mr. Wooden:

Q. You referred to manufacturers sending out notices to their trade after this meeting, and you receiving one of

such notices. I am showing you a paper marked "Commission's Exhibit 1903" for identification. Is that the sort of notice that you referred to?

A. Yes, sir.

Mr. Leisure: I object to "Is that the sort of notice." If that is one of the notices, he can identify it.

Mr. Wooden: All right.

The Witness: Yes, sir, that is one of the notices.

12013 Mr. Wooden: There are a number of those notices already in the record, and there will be more.

I offer this Exhibit 1903, which is the notice to the trade of the Universal-Atlas Cement Company dated April 9, 1935.

Trial Examiner Norwood: Any objection?

Mr. Zimmerman: Couldn't you pick out the one that went out first? I mean, if there were some that went out first from different companies.

Mr. Wooden: I will ask him. I want to know that myself.

Mr. Leisure: No objection.

(COM. EX. 1903 was offered and received in evidence.)

12014 Q. Can you say, Mr. Runion, whether these notices of the manufacturers' trade policy to dealers came out about the same time or can you say which one—whether any one came out ahead of the others?

Mr. Leisure: Now, I think the notices are the best evidence, and I think they should be offered in evidence. They should be here.

Trial Examiner Norwood: Read that question.

(Question read.)

Trial Examiner Norwood: Did you receive more than one of those; that is, you received a similar thing from different companies?

The Witness: Yes.

Trial Examiner Norwood: Objection overruled. He may answer that.

The Witness: The question.

By Mr. Wooden:

Q. Then did you receive them about the same time or can you specify which ones came first?

A. I couldn't specify which ones came first, and they came over a period of time, possibly two to three

12016 weeks.

Q. Do the statements in Exhibit 1903 epitomize

what the dealers expressed to the manufacturers at this meeting that they wanted?

Trial Examiner Norwood: Let me see that.

(Commission's Exhibit 1903, for identification, was handed to the Trial Examiner.)

12017 Q. As being things that they wanted?

Mr. Leisure: I object to the witness giving any conclusion on that.

Trial Examiner Norwood: Yes, I think so.

Mr. Leisure: The testimony is in evidence as to what the dealers asked for, and the exhibit is in evidence now.

Trial Examiner Norwood: This paper certainly shows what it epitomizes.

Mr. Wooden: Well, it speaks for itself, of course, your Honor, but it doesn't make any reference to this meeting. I am asking the witness whether that paper covers the things that the dealers expressed at this meeting.

Trial Examiner Norwood: You are asking him about the meeting?

Mr. Wooden: Yes, with the paper as the basis for the question.

Trial Examiner Norwood: Yes. Well, you can answer it from that standpoint.

I shall overrule the objection.

A. Partially.

By Mr. Wooden:

Q. In what respects did it not represent what the dealers said they wanted at the meeting?

12018 A. We wanted all.

Q. I see.

A. And all of these sections, where they proposed to do certain things which exempts the dealer from participating in the sale of cement is not satisfactory to us.

Trial Examiner Norwood: That is, on those direct sales to the Government.

The Witness: That is right.

Trial Examiner Norwood: You opposed that?

The Witness: Yes.

Trial Examiner Norwood: Or any other direct sales?

The Witness: Yes, sir.

By Mr. Wooden:

Q. So far as it goes, however, does it represent what the dealers said they wanted at the meeting?

A. I would say so.

Q. Referring to this Exhibit 1903, reference is made to a policy, sales policy announced in February 21 by the Universal-Atlas, and then the new policy is stated in this paper. What was the difference between the policy of manufacturing with regard to classes of trade that would be handled through dealers and would be handled direct between the February and April announcement?

12019 Mr. Wooden: There were other statements sent out in February by other manufacturers.

Trial Examiner Norwood: He can tell what was the practice of the trade as he knows it in that respect.

12020 A. Fundamentally there is little difference, to my knowledge. I would have to see other paper to refresh myself on what the—

Q. Showing you again Exhibit No. 461, for identification, which you said was your circular or a photograph of it, it is addressed, I note, to all cement companies serving "this area."

Can you say what companies were those?

A. I can't tell you definitely, but I can name the companies that sell the bulk of the cement in that area.

Q. All right, name some of them.

A. The Ash Grove Cement Company, the Nebraska Cement Company, the Hawkeye Cement Company, Missouri Portland Cement Company, the North Dakota Cement Plant.

Q. You mean South Dakota?

A. Pardon me, I mean South Dakota Cement Plant. Those I would say.

12021 Q. How about Penn-Dixie?

A. They sell practically no cement in Nebraska, to my knowledge.

Q. Would you say that it is your best judgment that you sent copies of this circular, which is Commission's Exhibit 461, for identification, to the companies that you have named?

A. I would say so, yes, sir.

Mr. Wooden: Your Honor, I will offer Exhibit 461 at this time, and with the explanation that it is one of the documents which was produced under subpoena duces tecum last winter by the Penn-Dixie Cement Company, one of the respondents.

Trial Examiner Norwood: This is your signature to this document, is it (indicating)?

The Witness: Yes, sir.

Trial Examiner Norwood: Any objections?

12022 *Examination on Voir Dire by Mr. Leisure.*

Q. Mr. Runion, will you look at the first paragraph of your letter there (handing the exhibit referred to the witness)?

A. Yes.

Q. You did not have reference to, for instance, cement companies on the Pacific coast? You are really
12023 talking about those companies that served your territory in that letter; are you not?

A. Primarily, yes.

Q. Well, entirely? I mean, you are not attempting to pass on—

A. No.

Q. —Pacific companies, manufacturers, for instance?

A. No.

Q. You are talking about those that served your territory.

A. That is right.

Q. And those companies only?

A. Yes, with whom we deal.

Mr. Leisure: Your Honor, the exhibit contains the kind of statements that if the witness were asked the questions on the witness stand, he would not be able to answer because of hearsay, and I want to object to it as being a hearsay document.

Mr. Wooden: It is a document, your Honor, that relates to the results of this meeting of March 19th sent out to cement companies and on which cement companies acted.

Trial Examiner Norwood: The counsel may on cross examination question this witness as to the source of his information.

Did you complete your statement, Mr. Leisure?

12024 Mr. Leisure: Yes, sir.

Trial Examiner Norwood: Any further objections?

Mr. Zimmerman: Well, off the record.

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood: On the record.

Mr. Zimmerman: No, I have no objection.

(COM. EX. 461 was offered and received in evidence.)

By Mr. Wooden:

Q. You state in this exhibit 461, Mr. Runion, that you have been informed that the cement distribution policy developed in Chicago on March 19th has been accepted by the majority of the cement industry.

What was the source of your information?

A. I am assuming that statement that we received—

Trial Examiner Norwood: That, is Commission's Exhibit 1903?

Mr. Wooden: Universal-Atlas circular.

Mr. Leisure: The number is 1903.

The Witness: Yes, that.

Mr. Leisure: Yes.

12025 Q. And received from the various companies.

A. Yes, sir.

Mr. Leisure: Well, now, obviously, he did't receive this, from the various companies, and I object to the question.

Mr. Wooden: Of course, he didn't receive the Universal-Atlas statement from various companies.

Trial Examiner Norwood: It is very clear what he received from the other companies; that is, a statement similar to that.

Mr. Leisure: There is no testimony whatever in the record that he received a statement similar to this.

Mr. Wooden: I think so.

Trial Examiner Norwood: I think so.

Mr. Leisure: He received statements from other companies but the contents have not been gone into and I objected all along to the comparisons to documents that are not in evidence.

12026 Trial Examiner Norwood: I think that he should be allowed to show that, from my recollection of the testimony. Objection overruled.

By Mr. Wooden:

Q. You went on in this Exhibit 461 to state you were writing all companies serving your territories to forward to your office a copy of their announcements of this policy. Did you do that?

A. Yes, sir.

Q. And is that the way you got the various announcements of policy you have referred to?

A. Yes, sir.

Q. I now show you a paper marked Commission's Exhibit 1904-A and B, for identification. Will you state what it is?

(Handing document to witness.)

A. This is a letter addressed to Allan T. Flint, secretary of the Mountain States Lumber Dealers Association, Denver, Colorado.

Q. Who is the author of the letter?

A. I am.

Q. Does it contain your signature?

A. Yes, sir.

Q. The word "Phil"?

A. Yes, sir.

12027 Q. Did you place in that letter the facts as you then knew them to be?

A. Yes, sir.

Mr. Wooden: Your honor, I could ask the witness state some of those facts as outlined in his letter, but I am going to attempt to short-cut, at any rate, by offering the letter itself, Exhibit 1904-A and B.

12029 Trial Examiner Norwood: I shall overrule the objection and receive the exhibit as marked, 1904-A and B. The writer is on the stand and he may be cross-examined on the contents of this letter.

12031 (COM. EX. 1904-A and B was offered and received in evidence.)

Q. Mr. Runion, you refer in this exhibit, 1904-A and B, to a copy of a cement distribution statement which you were enclosing. What statement were you referring to?

A. I am assuming it is one of those like that one over there (indicating).

Q. Like Exhibit 1903?

A. Something like that.

Q. Where in such a distribution statement or under the market policy that is referred to by any such distribution statement was it accepted that the dealer should receive 15 cents a barrel profit on any sale of cement sold thereunder?

A. I never saw a distribution statement carry a mark-up of that kind.

By Trail Examiner Norwood:

Q. Did any such arrangement ever come to your knowledge?

12032 A. No, sir.

Q. What do you mean by saying it was accepted under that market policy that the dealer should receive 15 cents a barrel profit?

A. In the general conversation with anybody connected with the handling of cement, it was taken for granted that that would be a fair profit.

Q. The 15 cents was an increase, wasn't it? Wasn't it formerly 10 cents?

A. It may have been; I am not certain. It may have been prior to my being in as secretary.

12033 By Trial Examiner Norwood:

Q. Now, wasn't the dealer mark-up, the usual dealer mark-up 10 cents prior to this meeting?

A. I recall a dealer securing 10 cents profit on various types of work. It might not have been identical with the statement that prevails there now.

Q. Was that the mark-up on large quantities?

A. Yes, sir.

By Mr. Wooden:

Q. And then it became 15 cents later?

A. Yes, sir.

Q. Can you say when it became 15 cents?

A. I can't say definitely as to the date, but about the year of '35, sometime during that period.

Q. It became 15 cents, did it not, after this meeting?

A. I am assuming it did, yes, sir.

Q. What is this reference in Exhibit 1904-B to the statement adopted April 30th, 1935? What was the statement of April 30th, 1935?

A. Is that the date of this one over here (indicating)? Isn't that—

Q. No, it isn't. That is why I am asking you. This is April 9th, 1935.

(Handing document to witness.)

A. The only statement I recall was this one.

12034 Q. You don't know what that reference to April 30th, 1935, means, then?

Mr. Zimmerman: When he says "this one", may the record show he is referring to Commission's Exhibit 1903?

Mr. Wooden: Right.

Trial Examiner Norwood: That is correct.

A. That is the only statement I have knowledge of.

By Mr. Wooden:

Q. Was there any meeting on this subject other than the one of March 19, 1935, that you referred to?

A. I think there was.

Q. Where and when?

A. I can't give you the date. I rather think in Chicago. I never attended any thereafter.

Q. Was it subsequent to the one of March 19th, 1935?

A. I rather think so.

Q. How long after?

A. I don't recall.

Q. Can't you say whether it was a matter of weeks or days or months, or what?

A. I would say weeks; possibly a month.

Q. Was there any meeting held on or about April 30th, 1935?

A. I don't recall.

12035 Q. Were you invited to that meeting, Mr. Runion?

A. I presume I was.

Q. Was it stated in the invitation what the subject of discussion was to be?

12036 By Trial Examiner Norwood:

Q. Was this before or after the meeting with the manufacturers?

A. The meeting the gentleman has referred to now?

Q. Yes.

A. I think that was afterwards.

Mr. Wooden: Yes, he said that before.

By Mr. Wooden:

Q. Was this second meeting to be a meeting of the dealers and cement manufacturers?

12037 A. I don't recall ever having received a definite invitation to any of those meetings.

Q. Did you ever communicate with any cement manufacturers about that second meeting?

12038 A. Subsequent meetings?

Q. The second meeting?

A. No, sir.

Q. Did you ever notify your members concerning that second meeting?

A. No, sir.

Q. Do you know anyone who was present at that second meeting?

A. No, sir.

12039 *Cross-Examination by Mr. Leisure.*

Q. Mr. Runion, this circular that was sent out by Universal-Atlas, dated April 9th, 1935, marked Exhibit 1903, —have you any of the other circulars that you received during that year?

A. Not in my possession here.

Q. You haven't got them here now?

A. No, sir.

Q. The meeting which you discussed and which you attended, I believe you said you were just new, you had just come into the work at that time and you had been to the meeting in Chicago?

A. My work mainly, up to the time I had accepted the position as secretary, until the invalidation of the Code, was administering codes. I was secretary of the Code Authority of the State of Nebraska.

12040 Q. Now, as to the meeting, was there some complaint on the part of the dealers—was there some feeling on the part of the dealers that they ought to have the business that was being sold direct to the Government at that time?

A. Yes, sir.

Q. And then you stated these complaints? Was that the purpose of your—

A. Yes, sir.

Q. —getting together?

A. Yes.

Q. And then after that you received this announcement from Universal-Atlas, April 9, 1935?

12041 Q. I mean the announcement was dated April 9, 1935. I am referring now to Exhibit 1903.

A. Yes, sir.

Q. In other words, it was after the meeting in Chicago that you received that circular or announcement?

A. Yes, sir.

Q. On what basis, Mr. Runion, did you dealers complain at that meeting? What service did you feel you could render as dealers?

A. We feel that the most economical method of distribution, distributing cement, is through a retail dealer.

Q. Well, was the Government seeking to buy direct from the manufacturer and leave the dealer out? Was that why you were complaining?

A. Yes, sir.

Q. How much cement was purchased, if you know, in 1934 and 1935 by the United States Government direct?

A. I couldn't answer that. I don't know.

Q. Was it substantial?

A. I would imagine a goodly amount of cement.

12042 Q. You knew something about it at that time, and you were complaining about it at the meeting?

A. Yes, there was a sufficient amount being sold that we had a desire to participate in the business.

Q. You did feel it was substantial?

A. Yes, sir.

12044 Q. Now, Mr. Wooden asked you about these mark-ups, and as I gathered the trend of his questions, he sought to bring out from you that there was at the time of the meeting in Chicago a mark-up of 10 cents, and then after that there was a mark-up of 15 cents.

Do you know or don't you know that there was prior to that time a mark-up as high as 25 cents?

A. I know there were instances of where dealers secured mark-ups that high.

Q. Did you want by your series of answers to the series of questions to give the Examiner to understand that as a result of this meeting the dealers got together and agreed to mark up from 10 cents to 15 cents? Did you intend to give any such impression?

A. No.

Q. Well, then, you do know that there had been mark-ups higher than 10 cents both before and after the meeting, do you not?

A. Yes, sir.

Trial Examiner Norwood: Was that the case with the large business, the large orders?

The Witness: We have had mark-ups from nothing to 25 cents a barrel depending on the competitive conditions that existed.

12045 Trial Examiner Norwood: Did you ever mark up 25 cents, though, on these large orders?

The Witness: The larger ones seldom.

By Mr. Leisure:

Q. Now, coming back to your own specific field as to the NRA Code. What have you to say to the provision about dealers' mark-up in the Code, in the dealers' Code?

A. In the hard materials Code they originally attempted—the Code Authority attempted a mark-up of 50 per cent on hard materials which would include cement.

Q. There was a Code provision about it, wasn't there, Mr. Runion?

A. Yes.

12047 Q. We have been discussing mark-ups. Would you just tell us what you mean by mark-ups so we will get it into the record?

A. An added profit to the cost of cement, the mark-up.

Q. How did the dealers use it so that it will appear intelligently on the record? What do you mean? What did you do when you use the word "mark-up"? What happens?

A. The dealer purchases a barrel, a sack of cement at 60 cents, he increases the profit in a mark-up of the percentage.

Q. And you mean that that is the dealer's profit?

A. That is the dealer's profit.

Trial Examiner Norwood: The gross profit.

The Witness: The gross profit, yes, sir.

By Mr. Leisure:

Q. Now, coming back to my other question as to your service, what did you do for that profit, the dealers?

A. The service?

Q. Yes.

A. The service varied from the purchasing of cement, the reinvoicing of it to the contractor or the pur-

12048 chaser, collecting the money, unloading charges, storage charges, deliveries, items of that nature.

Q. I would like to refer for just a moment to this letter of yours, Mr. Runion, that is, Exhibit 461.

In the first paragraph of the exhibit, you say "we have been informed that the cement distribution policy developed in Chicago"—by "distribution policy" did you mean in that letter the things that the dealers were asking for at that meeting? Is that what you meant by "policy"?

A. Yes, sir.

By Mr. Leisure:

Q. When you received those announcements, such as the Universal-Atlas announcement, Exhibit 1903, you understood those to be the individual companies' announcements, did you not?

A. Yes, sir.

Q. You didn't understand them to come from the industry as an industry, the announcement?

A. No, sir.

Mr. Leisure: I think that is all.

By Mr. Zimmerman:

12049 Q. That is to say, they handled various building materials, including Portland cement?

A. Yes, sir.

Q. And that extended back over how many years?

A. I began in the business in 1915.

Q. During that time you became familiar with the business carried on by certain dealers in the distribution of the cement; did you not?

A. Yes, sir.

Q. Can you tell us whether or not it was the policy of cement companies during all that period of time with which you were familiar to distribute the greatest amount of their products through dealers located throughout

12050 their sales territory?

A. That was their policy.

Q. And the dealer, in turn, boosted wherever he could the sale of cement in his territory?

A. He tried to get a fair profit.

Q. And tried to sell as much cement as he could?

A. Yes, sir.

Q. The dealer was in close touch with all local jobs and had the opportunity whether they were large or small to call attention to cement and the need for it and to sell it?

A. Yes, sir.

Q. To that extent you did render a valuable service in the sale of cement, did you not?

A. Yes, sir.

Q. And also you sold cement anywhere from one bag up to several hundreds of barrels?

A. Yes, sir.

Q. So that you served the needs of the people in the community that might need a small amount in a hurry or a large amount over a period of time?

A. Yes, sir.

Q. For that purpose, as you know, the various material dealers carried a considerable stock of cement in their warehouses; did they not?

A. Yes, sir.

12051 Q. Now, when you stored a stock of cement in your warehouses, that was bought and paid for with the dealers' money; that is, you purchased it from the manufacturers and then paid for it?

A. Yes, sir.

Q. And it was the dealers' capital that was tied up in that situation, wasn't it?

A. Yes.

Q. And then when you resold that, there were
12052 no credit risks involved, so far as the cement companies were concerned?

A. No, sir.

Q. And on all jobs that arose in and around the locality, that is, close enough for you to render services and deliveries quickly and easily, it had been your custom to sell to contractors as well as to small users, had it not?

A. Yes, sir.

Q. And for that reason the cement companies did not sell direct to contractors where they had dealers?

A. That was the practice.

Q. And that practice continued uninterruptedly until about 1934; did it not?

A. Yes, sir.

Q. With the occasional instance of where perhaps some fellow might pose as a dealer by carrying some small stock, when, in fact, he was merely buying wholesale in order to use it in his contracting business? You did have a little trouble about that from time to time?

A. Yes, sir.

Q. And in that instance where the cement company found that they were selling a contractor who was only masquerading as a dealer, they discontinued it, did they not, as a matter of custom?

A. Yes, sir.

12053 Q. Now, in 1934, you will recall that there was approximately appropriation of some four and a half billions of dollars by the Federal Government to go into what was known as Federal Relief work? You recall that, do you not?

A. Yes, sir.

Q. That was supposed to be one of the measures that was only temporary in order to try if they could get over the depression more quickly; is that not so?

A. That is right.

Q. That is a matter of common knowledge, isn't it?

Yes, sir.

12056 Q. Now, in 1934, or after the appropriation of the four and a half billion dollars, there came into being certain agencies of the Federal Government we will describe as alphabetical agencies. Some of them were WPA, PWA, but different agencies that were engaged in buying cement and other materials for relief work jobs. Some of those were located in your—some of those projects were located in the territory where there were material dealers such as the dealer that you have been connected with, is that not so?

12057 A. Yes, sir.

Q. Those agencies sought to buy their supplies of cement and other materials direct from the manufacturers; that is so, isn't it?

A. Yes, sir.

Q. Now, the work that was being carried on by these Federal Agencies was the same sort of work that private concerns, firms and corporations, and individuals had been doing prior to that time, the same class of work; is that not so?

A. That is true.

Q. And in doing that work, these private persons, firms and corporations had been accustomed to buy their materials, including cement, from the dealers in the locality?

A. That is right.

Q. So that when the Government agencies that we have referred to as PWA and WPA and the like began to demand that they buy direct from the manufacturers, it was depriving the dealers of a class of business that they theretofore had enjoyed exclusively?

A. That is right.

Q. That was what gave rise to the trouble and complaints that were being made, is it not?

Trial Examiner Norwood: Now, answer that of your own knowledge.

12058 A. Yes, the dealer was losing out on business that he normally would receive, and they complained. They objected.

By Mr. Zimmerman:

Q. And to some extent they did lose business as a result of these new agencies coming in, did they not?

A. They did.

12059 Q. I will ask the witness. What was the fact, and confine yourself to that, and not to speculation, but to facts that existed at the time as to the extent to which the business of the dealers who were dealing in cement and building materials was involved by this change in policy in the manufacturer selling direct to government agencies and thus taking away from the dealers business which they had theretofore enjoyed? Just tell us what you know about the situation.

12060 Trial Examiner Norwood: I am going to ask you to confine your answers to matters of fact within your knowledge.

A. It is a fact that prior to the Governmental activities in building, that the retail dealer participated in the sales of the majority of building materials used in the territory in which he operated. Then when these various agencies began to function, the dealers were rapidly losing that business.

12061 Q. With what result as it came under your knowledge and observation?

A. Decreased sales, decreased volume of profits.

12062 Q. Now, it was relating to the situation that you have just described that the meeting was held in which you undertook to sell the dealers or to sell such manufacturers as were at the meeting on the idea

12063 that you ought to, as dealers, have the same right to participate in business arising in your dealer territory as you had always up to that time had?

A. Yes, sir.

Redirect Examination by Mr. Wooden.

Q. Mr. Runion, didn't you tell me on direct examination that the dealers at this meeting told the manufacturers they wanted all the business in their territory?

A. That is right.

Q. Had they had it all before that time?

A. They never have, no, sir.

Q. Then you wanted more than the same rights which Mr. Zimmerman asked you you had up to that time, is that right?

A. We wanted all the business we could get.

Q. And you wanted more than you had been getting?

12064 A. Yes, sir.

Q. Isn't it a fact or is it a fact that prior to that time the Government, both Federal and State Government, had always been accorded the privilege of buying direct from manufacturers?

A. Yes, sir.

12067 Q. Regarding this 25 cend mark-up that you were asked about, do you mean that that was a general mark-up or that it occurred or existed only in certain limited number of localities?

A. The 25 cent mark-up?

Q. Yes.

A. The 25 cent mark-up would be governed by the ability, the dealer's ability to secure that mark-up.

Q. But my question was, whether it was general or limited to certain specific localities, that amount of mark-up?

A. It was limited to certain localities or instances.

Q. And where it was limited, was that mark-up with the protection of the manufacturers?

A. What do you mean? I don't understand your question, "protection of the manufacturers".

By Trial Examiner Norwood:

12068 Q. Did the manufacturer in quoting direct to any of your customers protect you in the mark-up?

A. The manufacturers in those instances, to my knowledge, didn't quote. The dealer handled the business.

By Mr. Wooden:

Q. And in those instances did the manufacturers give any sort of protection to the 25 cent mark-up itself?

A. They had nothing to do with it.

Q. In quoting for the dealers' account?

A. If the salesman of the cement company was assisting the dealer in the making of the sale, he would go to that dealer and ask him how much profit he wanted, and if the dealer thought he could secure 25 cents a barrel, the cement salesman would add that mark-up if he was quoting or assisting the dealer.

Q. So there was some assistance or protection by the manufacturer to a mark-up of 25 cents in such cases?

Mr. Leisure: He has answered that three times.

Trial Examiner Norwood: I think so.

Mr. Leisure: He said the manufacturer had nothing to do with it.

Mr. Wooden: He said he added that much to the wholesale price, as I understand it.

The Witness: If the dealer requested—the figure the dealer requested was added to his cost and if the
12069 salesman was assisting him in making that sale, he would add that to the manufacturer's cost of cement.

By Mr. Wooden:

Q. And in the cases where the mark-up was 10 cents or 15 cents, did the same thing occur?

A. That is right.

Q. The 10 or 15 cent mark-up, as I understand it, was the one that was generally applicable, rather than the 25 cents, is that correct?

A. Yes.

Q. What yards were you connected with in 1915? And subsequently?

A. 1915 to 1917, Chicago Lumber Company of Omaha.

Q. Was that a line-yard concern?

A. Yes, sir.

Q. All right, what others?

A. 1929 to —1919 to 1929, Walrath & Sherwood Lumber Company, Omaha.

Q. Is that also a line-yard concern?

A. Yes, sir.

Q. Does that mean with a string of yards at different points?

A. Yes, sir.

Q. All right, what else?

A. 1929 to 1930, Dierks-Drumm Lumber Com-
12070 pany, Lincoln, Nebraska?

Q. Is that also a line-yard concern?

A. No, sir.

Q. Between 1930 and 1933, what was your connection?

A. I was a salesman with the insurance department of the Association.

Q. Of which you are now secretary?

A. Yes, sir.

12072 *Recross Examination by Mr. Leisure.*

Q. Mr. Runion, I am not clear from your last answers to Mr. Wooden whether or not the complaint which you had when you went to the meeting was that you wanted to get business that you had never had before, as Mr. Wooden's questions seem to indicate you wanted to get a part of the Government's business, or whether it was business that you had had? Isn't this a fact: Isn't it a fact that local jobs were being taken over which had never been taken over before by the Government?

A. Yes, sir.

Q. So that you didn't go there complaining, trying to get work that you had never had before, you wanted to retain these local jobs which you had had previously, isn't that so?

A. Yes, sir.

Q. That is all. Oh, how many dealers are there in Nebraska?

A. 742.

12074 Mr. Schofield: P. H. Schofield, S-c-h-o-f-i-e-l-d.

I have two subpoenas duces tecum that are returnable today at two o'clock, directed to the secretary of the Cowhan Engineering Company of Chicago, Illinois and the secretary of the Trinity Portland Cement Company of Chicago, Illinois.

Upon receipt of these subpoenas we advised the attorneys for the Commission that we would be unable to produce the original documents called for in the subpoenas, because they are now in use in a proceeding in Austin, Texas, in which the Trinity Portland Cement Company is a party defendant and the State of Texas is the party plaintiff, and that hearing is going on simultaneously with this hearing; and at the suggestion of counsel for the Commission we have requested photostatic copies of these documents, which we expect momentarily, and I be-

12075 lieve that it has been agreed that this subpoena might be continued until two p. m. on Tuesday, December 13th, and at that hearing the secretary of the Cowhan Engineering Company will appear. The Secretary of the Trinity Portland Cement Company is a resident of the State of Minnesota, and I did not contemplate bringing him. The documents in both subpoenas are the same.

Mr. Wooden: If the documents are produced, we will

not care for the personal appearance of the secretary from Minnesota, and it is understood, just as you have stated, Mr. Schofield, that the return date on the subpoenas may be extended until two o'clock on next Tuesday.

Mr. Schofield: Yes. Thank you very much.

Trial Examiner Norwood: You will produce them then as his attorney and in his stead?

Mr. Schofield: Yes.

Mr. Smith: Mr. Examiner, certain questions were asked of Mr. Crapo when he was on the stand. I have the information here, the answers, and I would be glad to read them into the record.

Mr. Wooden: Will it consist of answers or consist of documents, or just what?

Mr. Smith: There is one exhibit, or, two ex-
12076 hibits, I believe.

At page 11221 of the record Mr. Crapo was asked to make a check that would permit him to answer the question as to whether the Toledo base ever controlled any territory north of the Ohio-Michigan line and west of the Ohio-Indiana line, and as to whether the Toledo base ran up into Michigan.

His answer to that is that whenever the base price of Toledo, plus freight, made lower delivered prices in Indiana, it was used in Indiana; that the Toledo base price was never used to make prices in Michigan.

Mr. Wooden: Pardon me. Does that mean—it does not answer the question whether it was ever used in Indiana, does it?

Mr. Smith: Yes, it was used in Indiana.

Mr. Wooden: It says "whenever," but it doesn't say whether it actually was or not.

Mr. Smith: I think it was in the northeastern part of Indiana, close to the Toledo territory.

Mr. Wooden: That might be implied, but it isn't quite specific.

Mr. Smith: Then at page 11228, he was asked:
12077 Whether during the time that you had the flat price in effect, that was in Michigan, did the Buffington Base, plus freight, into that southwestern area of Michigan, ever make a lower or a higher delivered price than the flat price you had in effect?

The answer is: During the time that the Michigan plan was in effect—

Mr. Wooden: What plan?

Mr. Smith: The Michigan plan, that is, the flat price was in effect, the base price at Buffington, plus the freight, resulted in higher delivered prices to certain points in the southwestern area of Michigan than the Michigan flat prices there in effect.

At page 11256 I agreed to furnish a tabulation complete from 1925 to the present time in 1938, showing the amount of the relative percentages of truck and rail deliveries from all distributing points of the Huron, giving also by year the relative percentages of all deliveries by Huron from all points.

At the time of the hearing it had only been partially computed. It is now computed down to October 31, 1938, beginning with the year 1925. I will have that marked as a Respondents' exhibit.

Mr. Wooden: I don't think it should be a Respondents' exhibit, should it? I asked for it.

12078 Mr. Smith: Do you want it?

Mr. Wooden: I don't care, just so we have it in the record.

Mr. Smith: I think we have one as a Respondents' exhibit, and it might be more uniform.

Mr. Wooden: All right.

(The document referred to was marked "Respondents' Exhibit 63-A and B," for identification.)

Mr. Smith: Mr. Crapo referred, in his testimony, to deliveries at certain points, Detroit and Cleveland, as I recall, and they are included with the other points. This exhibit also will show the years in which the first deliveries were made from each of the packing plants of the Huron.

At page 11415—

Mr. Wooden: Pardon me. Does your honor wish to rule on that at this time?

Trial Examiner Norwood: I thought you might make the offer of all of them at one time.

Mr. Wooden: All right.

Trial Examiner Norwood: Are you giving another number there?

The Reporter: No.

Mr. Smith: This is 63-A and B. That is the only one I have produced.

12079 Trial Examiner Norwood: All right.

Mr. Smith: At page 11415 he was asked whether

the 95 cent base price in Cleveland was raised to $1.20 in 1932, and to give the dates when it was raised and the amount to which it had been raised.

The records of the Huron show that the base price, that the Cleveland base price of 95 cents, less 10, was established on June 20th, 1931. It was raised to $1.20, less 10, on August 10th, 1932.

On December 15th, 1932 it was made $1.40, less 10.

On June 7th, 1933, it was made $1.65, less 10.

On September 3rd, 1935 it was reduced to $1.50, less 10.

On January 8th, 1936 it was raised to $1.65, less 10.

And on September 27th, 1937, it was made $1.50, less 10, and that basis is still in effect for use in Ohio.

12080 Page 11428, he was asked—

Trial Examiner Norwood: Now, the one that you have just been reading from, can that be numbered now?

Mr. Smith: It isn't an exhibit. I am reading from the notes.

Trial Examiner Norwood: Go ahead.

Mr. Smith: On page 11428, he was asked to attempt to discover whether in any case at the Silo point the base price there was equivalent of some other base price plus freight to that point. His answer to that is that there never has been an occasion when Huron has established a base point at any of its packing plants that was the equivalent of some other base price plus freight to that point.

Mr. Wooden: That meant the mathematical equivalent, of course?

Mr. Smith: Yes.

At page 11430, he was asked whether they had had in Oswego in effect there a five per cent barrel charge for delivery on trucking.

Mr. Wooden: Five cents. Five cent, not per cent.

Mr. Smith: Five cents per barrel charge for delivery on trucking over the rail delivered price. They had that five cent differential in effect at Oswego from December 15, 1932, to July 31, 1935, and from September 24,

12081 1935, to September 14, 1937.

At page 11441, inquiry was made as to whether they truck into Oswego and as to the mileage.

Mr. Wooden: Syracuse, wasn't it?

Mr. Smith: From Oswego to Syracuse. Huron has never delivered cement by truck to Syracuse from Oswego. The distance is approximately 35 miles. Truck deliveries are made east and west of Oswego for a distance greater than forty miles.

At page 11441, he was asked as to the percentage of truck deliveries made in their own trucks.

Have that marked, please.

(The paper writing above referred to was thereupon marked for identification as Respondents' Exhibit 64.)

Mr. Smith: Respondent's Exhibit 64 furnishes that information. I offer 64 in answer to that question.

At page 11451, he was asked the percent of sales and shipments made within the State of Michigan, the percent of total sales and shipments, and as to those made outside of the State of Michigan.

Mark this, please.

(The paper above referred to was thereupon marked for identification as Respondents' Exhibit 65.)

Mr. Smith: I offer Respondents' Exhibit No. 65.

12082 He was also asked, at page 11256, to furnish the figures that would show the relation between the rail and truck delivery from the Detroit plant.

This can be marked Exhibit 66.

(The paper above referred to was thereupon marked for identification as Respondents' Exhibit 66.)

Mr. Smith: At page 11448 of the record, he was asked for the figures that show the relationship as between rail and water shipments and truck shipments on the cement that moved from Alpena.

I offer in answer to that the paper to be marked Respondents' Exhibit 67.

(The paper above referred to was thereupon marked for identification as Respondents' Exhibit 67.)

Mr. Smith: I think that covers the information required.

Mr. Trial Examiner Norwood: Call your witness.

Mr. Wooden: Does your Honor care to rule on these varius exhibits at this time? There is no objection on my part, of course, to them.

Trial Examiner Norwood: Any objections?

Mr. Leisure: No objection.

12083 Trial Examiner Norwood: Mark it as received, those exhibits, Respondents' Exhibits 63-A and B, 64, 65, 66 and 67.

(RESP. EX. 63-A and B, 64, 65, 66 and 67, were offered and received in evidence.)

Mr. MacIntyre: We call Mr. A. T. Hansen as the next witness.

A. T. HANSEN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am Secretary-Treasurer of the Atlas Lumber Company that owns and operates retail lumber yards in Nebraska.

They handle and sell lumber and other building sup-
12084 plies at these various yards. Portland cement is in-
8 cluded among the building materials handled. I have been occupied in that position about 19 years. At the present time twelve yards are operated by the Atlas Lumber Company all within the state of Nebraska but scattered over the state. The Atlas Lumber Company holds a membership in the Nebraska Lumber Merchants As-
12085 sociation, not in any others. Both Mr. George Rasmussen, president of the company, and I have been more or less active as the representatives of our company in its trade association work in connection with its membership in the Nebraska Lumber Merchants Association.

Q. Have you in connection with your activities in that direction attended meetings of the Nebraska Lumber Merchants Association?

A. Yes, sir.

Q. Have you attended meetings of other organizations as a representative of the membership of the Nebraska Lumber Merchants Association; that is, trade association meetings other than meetings of that particular association as a representative of the membership of that association?

A. I don't recall attending as a representative of the Nebraska Association. I have attended meetings of other association groups.

Q. Well, my question was as to whether you had attended as a representative of the dealers who are members of the Nebraska Lumber Merchants Association?

A. Yes.

Q. Will you name any of those meetings that you can recall that you so attended?

A. I was a member of the Trade Relations Committee of the Nebraska Association for one year, and met with various members of sources of builders' supplies.

Q. In that connection did you meet with any
12086 manufacturers of Portland cement?

A. There was one meeting with the cement people that I recall, which was in Lincoln where only one representative appeared.

Q. One representative of a cement manufacturer?

A. Of a cement company.

Q. Can you name what representative that was?

A. It was Mr. Casdorf of the Hawkeye Company of Des Moines.

Q. What was the purpose of that meeting?

A. We were going to discuss among each other the matter of trade relations between manufacturers of cement and retail lumber dealers.

Q. That is, when you speak of trade relations, will you just explain what you had in mind there in the nature of trade relations?

A. Well, the matter of policy as to a sale, direct sale to consumer by the manufacturers or confining sales on types of orders to retail lumber dealers.

Q. Can you recall any other meetings that you attended as a representative of the dealer membership in Nebraska of a similar character?

A. Well, I attended two meetings in Chicago, Mr. MacIntyre, but I am not clear in my mind as to whether that was at the time I was a member of that Trade Relations Committee or not. I was present representing chiefly
12087 the Atlas Lumber Company, and our interests would be practically identical with those of other retail dealers in the state.

Q. Did you in that connection represent at such meetings dealers other than the Atlas Lumber Company who are members of the Nebraska Lumber Merchants Association?

A. Well, not that I was definitely assigned to represent them. I presume that the dealers of the state would conclude that I was representing the dealers of the State of Nebraska.

Q. You mentioned two meetings in Chicago that you attended in that connection. Will you please state if
12088 you can recall the dates of those meetings?

A. One was in March and one was in April, and I am not sure whether it was in '34 or '35.

Mr. MacIntyre: Mark this.

(The two papers above referred to were thereupon marked for identification as Commission's Exhibits 1906-A and B.)

By Mr. MacIntyre:

Q. Mr. Hansen, showing you documents which have been marked, for identification, as Commission's Exhibits 1906-A and B, and the document which has been marked as Commission's Exhibit 461, I will ask you to state if you will examine those, and whether or not after doing so you can state whether you recollect the meetings that you attended were in 1934 or in 1935.

A. Yes, I can state.

Q. Is your memory now and recollection refreshed as to which year you attended the meetings, Mr. Hansen?

A. Yes, sir.

Q. Can you state, then, within what year in March and April that you attended the two meetings that you refer to?

A. 1935.

Q. Can you state whether or not Mr. Phil Runion, Secretary of the Nebraska Lumber Merchants Association, attended the meetings that you refer to with you or at the time that you did?

12089 A. He was not at either of those meetings.

Q. That is, you didn't see him at the meetings?

A. He was not in the meetings, no, sir.

Q. Can you name people who were present at the meetings?

A. I could name a few of them, Mr. MacIntyre.

Q. Will you proceed to name all that you can possibly name whom you did note to be in attendance at the time you attended them?

A. Well, there were two different meetings, as I have testified.

Q. Let us start off with the first one, if you please, Mr. Hansen.

A. I was just starting to say I am not certain that I can differentiate now as to whether they were at the first or the second meetings.

Q. Well, let us then proceed with this thought. Can you state what the purpose of your attendance at the first meeting was?

12091 A. My understanding was that there would be a discussion among retail lumber dealers and with representatives of cement manufacturers in an effort to

compose any difference of opinion as to what could be agreed upon as a proper policy in the distribution of cement.

By Mr. MacIntyre:

Q. Was the purpose of both of the meetings the same or different?

A. Well, the second one was a continuation of the first because the first merely got the discussion opened.

12092 Q. Now, Mr. Hansen, will you please state the names of all the persons that you can recall as being in attendance at either of the two meetings to which you made reference?

12093 A. Mr. Don Montgomery—

Mr. Leisure: Will you get the dates fixed on this meeting then? I think the facts will show there were not—

Trial Examiner Norwood: He fixed them.

Mr. Leisure: No, March and April is as near as we have.

Mr. MacIntyre: During March and April of 1935.

Mr. Leisure: I think the exact dates will demonstrate that that was that one meeting as Mr. MacIntyre now indicates.

Trial Examiner Norwood: There were two meetings.

Mr. Leisure: Yes.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: The witness has stated that there

12094 were two meetings, one being the continuation of the first.

Trial Examiner Norwood: Answer the question.

Mr. Leisure: May we have the dates fixed on which meeting he is talking about? The date isn't fixed on either meeting, except April and March.

Mr. MacIntyre: I would like for him to state the date if he possibly can, if he can recollect the date on which it was held.

Trial Examiner Norwood: Do you remember the dates of the meetings?

The Witness: I do not, sir. I don't recall the exact date.

Trial Examiner Norwood: Well, go ahead, now, and answer the previous question.

A. Mr. Don Montgomery.

Q. Will you state who he is?

A. He is secretary of the—I can't give you the correct technical names—of the retailers association of Wisconsin.

Mr. George LePoint, a Wisconsin retail dealer. John Dobson.

Q. Just a second, if you please. Have you any further identification as to who Mr. LePoint is?

A. No, sir.

Q. His address or any business concern with which he is affiliated, or trade association?

12095 A. I only know that he is a retail dealer in Wisconsin, but I don't recall the name of his firm.

Q. Do you recall whether or not he was an officer of the Board of Directors, an officer or a member of the Board of Directors of the National Retail Lumber Dealers Association?

A. At that time?

12096 Q. During 1935, for that year?

A. No, I don't recall. I know he was at one time, but I am not certain whether he was at the time.

Q. All right. Pardon the interruption. Will you go ahead and give the other parties that were in attendance at that meeting?

A. Did this reporter get the name, John Dobson?

Trial Examiner Norwood: What is that?

The Witness: Did this reporter get the name, John Dobson?

Trial Examiner Norwood: I don't think so. Go ahead anyway and name them.

A. John Dobson—

By Mr. MacIntyre:

Q. Who is he?

A. (continuing)—and Weaver Dobson, brothers, both of the J. F. Anderson Lumber Company of Minneapolis.

Q. Can you state whether or not that you knew or had reason to believe that they were in attendance as representatives of any dealer associations?

12097 A. Well, that question never came up, as to who represented what. It wasn't a reported meeting. There was no roll call, there were no minutes taken. It was an informal discussion.

By Mr. MacIntyre:

Q. To your knowledge, have Mr. John Dobson and Mr. Weaver Dobson been active in the affairs of any trade association?

A. Yes, they both have been.
Q. What association?
A. The Northwestern Association.
Q. What is the full name, if you know it?.
A. I don't—the Northwestern Lumber Dealers Association, or something like that.
Q. The Northwestern Lumbermen's Association of Minneapolis?
A. That is the name.
(continuing) A Mr. Lampert, I don't recall his given name, and I don't recall which of the Lampert group he represented. There are two divisions of the Lamperts, also of Minneapolis.
Q. Is that Mr. L. Lampert, Jr.?
A. What does the "L" stand for?
Q. One of his initials.
A. Well, I mean, do you remember the given name?
Q. No, I do not.
12098 A. My best recollection is it was Leonard, but I wasn't certain that would be it.
Q. Of the L. Lampert Lumber Company of Minneapolis?
A. I would have to be guessing. I don't recall which branch.
(continuing) There were two representatives there of the Universal-Atlas Cement Company.
Q. Can you name them?
A. One was a Mr. Rohrer, and I am not certain that I recall the second one. My best recollection is Mr. Scott, or some name that begins with "S".
Q. Could it have been Mr. Stone?
A. It might have been Mr. Stone.
Q. Mr. Scoville?
A. I don't recall Mr. Scoville.
Q. Do you recall Mr. Cronkrite, A. C. Cronkrite, as to whether he was in attendance at the meeting?
A. No, sir, I do not.
Q. Do you recall whether B. H. Rader of the Lehigh Company was in attendance?
A. Mr. Rader was in one of those meetings, I don't recall which, for just a few moments, probably ten or fifteen minutes. My recollection is that he was called away for some telephone call.

Q. Do you recall whether or not the representa-
12099 tives of the Alpha Portland Cement Company were in attendance, at either of the two meetings?

A. I can't be certain of that, Mr. MacIntyre. I just have a faint recollection that there was a representative of Alpha, but it didn't register, because they don't operate in our territory.

Q. How about Mr. O. C. Hunt of the Pennsylvania-Dixie Cement Company of Des Moines?

A. I don't believe he was at either meeting.

Q. Mr. H. O. Warner or any of his representatives from the Nebraska Cement Company?

A. Well, Mr. Warner is the sales manager for the Colorado Portland Cement Company at Denver, and he was not there.

Q. Any representatives of his company or the Nebraska Cement Company there, to your knowledge?

A. Not that I recall, no.

Q. Can you recall of having seen Mr. J. B. John of the Medusa Portland Cement Company in attendance at the meeting?

A. I don't recall seeing him.

Q. Do you recall having seen Mr. D. S. Colburn of the Marquette Portland Cement Company in attendance at the meeting?

A. No, sir, I do not.

Q. Mr. L. J. Capen of the Dewey Company, do you recall having seen him at the meeting?

12100 A. I don't recall a representative of Dewey there. I don't recall any Mr. Capen.

Q. How many people would you say were in attendance at the meeting?

A. Well, at that first meeting about a dozen. In the second meeting, probably twenty to twenty-five.

Q. How many of the dozen in attendance at the first meeting, if you can recall, were representatives of cement manufacturers?

A. About four or five.

Q. That would leave, say, seven or eight dealer representatives?

A. And representatives of the associations. My recollection is that in one of the meetings there was a representative of the Michigan Retail Lumber Dealers, and I am not certain about Illinois, but I don't believe there was.

Q. You can't recall whether Mr. Adolph Pfund of the Illinois Association was present?

A. I know he wasn't there, because I have known of him and that would have registered.

Q. Do you recall having seen Mr. J. B. Cabanis of the Northwestern States Cement Company?

A. I know Mr. Cabanis, but I don't recall that he was in either meeting. He may have been, but I don't recall it.

Q. You don't recall of having seen him?

12101 A. No, sir.

Q. Can you state who presided at either of the two meetings, or both of them, Mr. Hansen?

A. Well, as I testified, the discussion was quite informal. There was really no presiding, but Mr. John Dobson rather directed the discussion to the subject. It wasn't an organized meeting with a chairman or secretary, or anything of that kind.

Q. Do you recall whether Mr. B. H. Rader of the Lehigh Company made a statement concerning the purposes and the hopes of the acomplishment of the meeting?

A. I don't recall such a statement.

By Trial Examiner Norwood:

Q. Well, what was done?

A. In order to explain what was done or was attempted to be done, it would be advisable, I think, to relate something of the circumstances leading up to the advisability for a meeting of this kind.

Q. Go ahead and tell it.

A. I don't want to make a speech from the witness stand.

Q. Go ahead.

12102 A. The retail lumber dealers had felt constantly that in their field of activity of distributing cement to the ultimate consumer that they should be allowed to do so without being in competition with their source of supply, and that in that field it had been the practice and the policy of the cement manufacturers to recognize that right on the part of their dealers and customers, and the distribution had gone along rather smoothly for many years.

With the advent of the difficulties following 1932 and 1933, and particularly with the coming on of the Codes, the relief programs, and things of that kind, there were types of jobs appearing in our state where there was a difference of opinion as to whether certain jobs should be sold by the

retail lumber dealers, as for instance, relief and semi-relief jobs.

There was a tendency on the part of some of the cement manufacturers to want to sell those direct or bid them direct, over the objection of the retail lumber dealers, and that situation developed to the point where there was considerable difference of opinion as to what was the proper function and field of the retail dealer in relation to that, and so the meeting was called to try and compose those differences of opinion in that respect.

Shall I continue further?

By Mr. MacIntyre:

12103 Q. What was done? Thank you. Will you please tell us what was done at the meeting that resulted in any composure of those differences, if anything of that nature was done?

A. The practice of the cement manufacturers had been to sell direct to railroads. We, as retail dealers, questioned that right, but got nowhere with it.

The practice had also been of the cement manufacturers to sell direct to the established departments of the United States Government and in some localities direct to States, and we raised no objections to the sale of cement direct to the established departments of the United States Government, but we did object to a sale direct to the State or any subdivisions of the State government, and we strenuously objected to the sale by the—the direct sale by the manufacturers to those newly established agencies of the department, whether it was the Federal Government or the State, that were of the nature of relief jobs.

Q. Such as the WPA or PWA or CCC?

A. Any of those, HOLC, and all the rest of them.

A. (continuing) We knew, as did everyone else, of the large appropriations for relief work, and I knew for the Atlas Lumber Company, that we were as badly in need of relief as were the cement manufacturers who had

12104 been gaining a substantial increase of volume by the spending by the Federal Government of this money, and we felt that part of the spending, which was for relief purposes, and so long as it was no less of a relief to the manufacturer if the retail dealer sold it, he would get his relief also, that the retailer should also participate in some of that relief.

I apologize for a long lecture, Mr. Examiner.

Trial Examiner Norwood: That is all right.

By Mr. MacIntyre

Q. What about the railroad work that you spoke about or sales to railways, Mr. Hansen?

A. The railroads buy direct now, except in very small quantities, where they may need a small quantity locally.

Q. Nothing was worked out at the Chicago meetings as to sales direct by the manufacturers different from what had been the custom before?

A. With respect to railroads?

Q. Yes.

A. I believe there was no change in that.

Q. No change in that?

A. No, sir.

Q. What was effected in the meeting with the cement manufacturers that led to any difference with respect to sales to United States Government agencies, relief or otherwise, relief agencies or otherwise?

12105 A. None of the representatives of cement manufacturers present at any of those meetings disputed the soundness of the position of retail dealers with respect to the relief jobs, and were entirely in accord with the desire of their dealers and customers to make those sales.

By Trial Examiner Norwood:

Q. But state what was done in the meeting.

A. When those differences were agreed upon or given as near an agreement as possible, it was left then that various manufacturers, those that were represented there, would draw their statements of distribution policy and send them to the—send them out to their customers.

By Mr. MacIntyre:

Q. Will you proceed, Mr. Hansen, in telling us 12108 just what was done in the ironing out of these differences at the meetings, the differences that you have enumerated?

12109 By Trial Examiner Norwood:

Q. You just answer that question in a factual way. What was done in those meetings?

A. I may have wrongly used the term "agreement" from a legal aspect. An agreement, in my mind, in that instance was a concession by both sides as to points of principle and policy in the sale of cement.

Q. And your understanding was that certain policies would be carried out, is that right?

A. By those present.

Q. Yes.

A. There was no provision or any discussion as to whether it was an enforceable thing, or anything of that kind, either upon the manufacturer or upon the retail dealer.

Q. Yes.

A. As a matter of fact, I am digressing again here.

Trial Examiner Norwood: Go ahead.

12110 By Mr. MacIntyre:

Q. Can you state anything further that was done at the meeting in the ironing out of these differences of opinion as to the distribution policy in connection with the sale of cement by manufacturers, Mr. Hansen?

A. That was the only subject discussed, was the matter of policy of distribution.

Q. Well, will you state just how far, if you can, in addition to what you have already stated, that the discussions went, in the ironing out of those differences?

12111 Q. Mr. Hansen, will you please state whether or not at the meeting or two meetings there was an ironing out of the differences as to the sale, the differences of opinion concerning the sale of cement by manufacturers to state governments, and just what the result was in that respect?

A. There were several parts of the discussion, as there are several phases of and types of business.

My best recollection is that with reference to the sale direct to state governments, the practice would be followed, or, what had been the practice in the various localities, in some states the state bought cement direct, in other states it was not bought direct, and whatever had been the previous practice would be retained.

With respect to large water projects, city water plants and things of that kind, the cement that was used entirely within the limits of an incorporated city would be sold by the dealer and there were many phases; I can't

12112 enumerate them all from memory now.

12116 Q. Mr. Hansen, I now show you a document marked for identification as Commission's Exhibit 1907, and I ask you to state whether or not you have seen announcements by the Northwestern States Portland Cement Company of its statement of sales policy that corresponds to that?

(Handing document to witness)

Mr. Leisure: Now, I object to that method of examining the witness. If he hasn't seen this paper before, it may be immaterial.

By Trial Examiner Norwood:

Q. Have you seen that paper or a duplicate of it? You may state that.

A. I am quite certain that I have.

Trial Examiner Norwood: All right, that is all right.

By Mr. MacIntyre:

Q. Does the sales policy statement or sales policy appearing thereon epitomize the plan or method of selling cement as discussed and adopted at the two meetings in Chicago to which you have made reference as having attended during March and April, 1935, with the cement manufacturers?

12117 A. This is a fair statement of the subjects that were discussed in those meetings, and is the manner in which the Northwestern States Portland Cement Company placed that in form as the policy of that company.

Q. That is dated April 18th, 1935?

A. That is right.

12119 Q. Mr. Hansen, I am again showing you a document, which has been marked, for identification, as Commission's Exhibit 1906-A and B, and ask you to state whether or not you recognize it, and, if so, as what?

A. Yes, sir; that is a letter which I wrote on March 3rd, 1936, and carries my signature. It is addressed to Mr. Allen T. Flint, Secretary of the Mountain States Lumber Dealers Association at Denver, Colorado.

Q. Those facts as stated in there are as you recollect them at this time, are they?

A. Yes, sir.

Q. This letterhead carries a listing of the yards, the location of the yards of the Atlas Lumber Company, does it, and the names of the officers of the company?

A. It carries the names of the officers of the company and the list of yards we were operating at that time.

Q. That is in 1936?

A. In 1936. There are two yards shown there now which we do not operate.

Mr. MacIntyre: If your Honor please, we offer this letter in evidence.

Trial Examiner Norwood: Any objections?

Mr. Leisure: Your Honor, this last letter that
12120 is being offered, which is the letter written by the witness to another dealer, and the witness signs as an officer of his own company, is so plainly and palpably not admissible in evidence as not being binding on any of the respondents, I think we should have some offer of proof as to how it is material or relevant.

Mr. MacIntyre: If your Honor please, we would be glad to make a statement concerning just how we feel that this letter is relevant and material to the issues. It shows that it is a report, at least in part, upon one of the meetings; that is, as to what occurred at one of the meetings attended by this witness, and about which the witness has testified. We have not as yet been able to secure from any one any other type of a written record of the proceedings of the meeting. We are doing the very best we can, offering the very best evidence that we can find in the form of a record of what occurred at this meeting in Chicago about which the witness has testified.

Trial Examiner Norwood: Any further objection?

Mr. Leisure: Your Honor, it isn't in the form of a report; it is a personal letter written to another dealer a year later than the meetings, and a statement by this witness wouldn't be admissible unless there was some
12121 charge that they are co-conspirators, and that hasn't been charged.

12125 (COM. EX. 1906-A and B was offered and received in evidence.)

Cross-Examination by Mr. Leisure.

Q. Mr. Hansen, in regard to these two meetings in March and April of 1935, as I understood you to say on direct, you went to the meeting representing your own company?

A. Yes, sir.

Q. Then you said something about the dealers in the state, I believe, that you were representing them. Do you mean by that that your desires and aspirations were similar, and for that reason they might assume that you were representing them?

A. Yes, sir; having served on that Trade Relations Committee, about which I testified, I had a fair knowledge of the desire of the dealers, and I thought I would repre-

sent their desires in connection with the matter, which was not in conflict with that of the Atlas Lumber Company.

Q. Precisely. And what would be good for you as a dealer would be good for them?

A. That is right.

Q. Is that what you had in mind? That is, you did not mean that you were authorized by any formal meet-

12126 ing or in any other way to go there representing the dealers of your state when you went; is that correct?

A. That is right. Any action that I took there would not be binding on any one, not probably even on the Atlas Lumber Company because it couldn't be enforced.

Q. Precisely. Now, the first meeting I think you said there were not very many present, and not very much happened? I don't know your exact phraseology. Nothing was done or nothing much happened; there were only about six men there? Is that what you said?

A. Oh, I think I said about a dozen, or something like that, in that first meeting.

Q. I beg your pardon.

A. And the informal discussion of the general subject.

Q. Precisely. And then subsequent to that meeting and before the second meeting, you received this North Western States Portland Cement Company—

Q. —you received this North Western States Portland Cement Company statement of policy, which has been marked by Mr. MacIntyre as Exhibit 1907? Is that what you said?

12127 A. No, sir, I didn't.

Q. Do you know that you received it before or after the second meeting?

A. My certain knowledge is that none of these announcements of distribution policy came from any of the cement companies until after the second meeting.

Q. And do you know the date of the second meeting?

A. I don't recall that.

12128 Q. Was it near the end of the month, do you know, Mr. Hansen?

A. My best recollection is that both meetings were near the ends of the months of March and April, but I could be mistaken to the extent that it was near the ends of February and March. I can't be positive of that.

Q. But you feel fairly certain they were at the ends of the months?

A. Yes, but I know also—

Q. But you don't know which month?

A. I know that the meetings had been held before any of this type of circular letter came out from the cement companies.

Q. You received those after the second meeting?

A. After the second meeting.

Trial Examiner Norwood: Can you remember about how much time elapsed before the first and second meetings?

The Witness: About four weeks, as I recall.

By Mr. Leisure:

Q. Now, Mr. Hansen, you also said that when you were there, you used the word "agreed" at one time. As I understand you, as a dealer, you went there with certain things on your mind that you wanted to talk about that you felt you should have additional business; is that right?

12129 A. Yes, sir.

Q. And when those were presented, your ideas, your complaints represented to the others that you saw there, and your complaints seemed to be just to you when you went there; didn't they?

A. Yes, sir.

Q. When you presented those complaints, which seemed to be just to you, to others, they said, "I agree"; is that what you meant by "agreement"?

A. Yes, or that the representatives of the manufacturers did not disagree with our position.

Q. Precisely. And they thought there was justice in your position?

A. Yes, sir.

Q. And you did not mean to say, did you, that they entered into any kind of an agreement or understanding that they would act in a certain way with you at the meeting?

A. Only to the extent that on this type, the main discussion was on this sale of cement for these relief jobs.

Q. They thought your discussion carried weight and they agreed with you; is that it?

Trial Examiner Norwood: Wait a minute. Let him answer.

A. And that the retail dealers should have the oppor-

tunity to quote and sell, that we be given that oppor-
12130 tunity without a competitive bid by the cement manufacturers.

Q. That was part of your complaint? That was part of your brief? You were arguing that, weren't you?

A. Yes, sir.

Q. They said they thought there was justice in what you were contending for?

A. That is right.

Q. And isn't that what you meant when you said that they agreed?

A. Exactly, that is what I meant when I said we were composing our various opinions on what constituted a fair distribution of cement by the retailers.

Mr. Leisure: Precisely. That is all.

By Mr. Zimmerman:

Q. At that time, Mr. Hansen, how many employees did the Atlas Lumber Company have?

A. Well, at that time we were operating only seven yards, and I should say in the entire Atlas organization there was probably fifteen or eighteen employees.

Q. Is that as many yards as you had had up to that time, seven yards?

A. Yes, sir.

Q. And those were all in the state of Nebraska?

A. Yes, sir.

Q. What companies, if you know, and I mean by
12131 that what cement companies, if you know, sold in that territory?

A. There is about fourteen or fifteen that come into the State of Nebraska.

Q. Can you recall what companies they were?

A. There is Universal-Atlas, Nebraska Cement Company, Colorado Portland Cement Company, Monarch, Hawkeye, Lone Star, Missouri Portland, Penn-Dixie, South Dakota Cement Plant, Monolith Portland Mid-West Company. There is a Sunflower brand; I don't recall what it is.

Q. I don't, either.

A. Dewey. I may have omitted some but that is chiefly the group.

Q. Well, now, have you told us the names of the concerns that were at the proceedings that you have reference to? I mean by that, cement concerns; all that you can remember?

A. I don't recall positively any of the ones present except two from the Universal-Atlas, and I believe the Alpha Cement Company was there, but there were unquestionably others that I do not recall some of those.

Q. That is the extent of your knowledge?

A. Yes, sir. May I continue?

Q. I didn't mean to interrupt you, sir. Go right ahead.

A. There were representatives there, as I recall, from some of these eastern cement manufacturers that wouldn't register in my mind because they don't come into
12132 the Nebraska territory.

Q. Now, you stated, as I understood it, on direct examination, that you were objecting to sales direct by the newly established governmental agencies that were handling relief jobs; that is to say, those were the governmental agencies that had taken over a class of work that prior to that time had been done by private contractors?

A. Yes, sir.

Q. The private contractors had been your customers?

A. Yes, sir.

Q. And when these relief agencies took over that work, you no longer had any customers in that line to the extent that the work was taken over?

12133 A. That is right.

By Mr. Zimmerman:

Q. Now, from your experience and knowledge of the business, state whether or not that was the first time that the Government had ever taken over the work that had been previously done by private business.

A. Well, so far as our experience goes, that was the first time.

Q. And confining your answer only to that phase of it, what you as dealers were attempting to do was to find ways and means of preventing a total loss of that business to yourselves?

A. Yes, sir.

12134 *Redirect Examination.*

By Mr. MacIntyre:

Q. On the direct examination, Mr. Hansen, you named Mr. B. H. Rader of the Lehigh Company as being one of the men present at the meeting, but on the cross examination you stated that—you failed to include his name as

among those that you recollect as having attended. You didn't mean to infer to Mr. Zimmerman that you cared to change your testimony, that Mr. Rader was in fact present?

A. No, sir; I did not intend to change the testimony.

Q. Will you please state what year it was that you were a member of the Trade Relations Committee of the Nebraska Lumber Merchants Association?

A. My best recollection is it was in the calendar year 1935, but I am not certain of that. 1934. I beg your pardon. That is my best recollection.

12135 Q. Now, calling your attention to Commission's Exhibit 461, I will ask you to look in the lower left corner of that exhibit, to the membership of the Trade Relations Committee of the Nebraska Lumber Merchants Association. The letter is dated April 29, 1935, and I ask you to state whether or not that recalls to your mind anything that may indicate to you that you were a member of the Trade Relations Committee of that association during 1935 or were possibly a member of the Committee during that year?

A. Well, my name appears on that photostatic copy of the letterhead as being a member of the Trade Relations Committee, and would indicate that it was in 1935. I was a member of that Committee. Unless perhaps this is a 1934 supply of letterheads that the association office was using up in the subsequent year.

Q. Well, are you sure that you were not a member of the Trade Relations Committee during the year 1935?

A. No, sir; I am not. I couldn't be certain about that.

Q. As a member of the Trade Relations Committee of that association, did you represent its membership at meetings similar to those that you attended and about which you have testified as having attended in Chicago during March and April, 1935?

12136 A. Well, I represented the membership of the association in the meetings that were called for the specific attention of that committee. It wouldn't necessarily be the same type of meetings as the one in Chicago.

Q. Well, just what was your duty as a member of the Trade Relations Committee, if it was not to represent your membership at such meetings as those in Chicago, Mr. Hansen?

12137 A. Our function was to receive any complaints that may have come into the association office from

individual dealers, where there was a difference of opinion as to sales policy between them and their sources of supply. If those objections or irritations became substantial, that then the Trade Relations Committee would meet with the various members of those organizations and sources of supply and try to iron out those difficulties.

By Mr. MacIntyre:

Q. Yes.

A. Create some harmony between the retail
12139 dealers.

Q. Just one further question. I will ask you, Mr. Hansen, if you can state at what address the meetings to which you have referred to in Chicago were held; that is the question I overlooked on direct examination that we would like to make as definite as we can as to the location of those meetings.

A. The meetings were held in the Palmer House, in Chicago.

Q. Palmer House?

A. Yes, sir.

12140 Trial Examiner Norwood: Yes. 1907 is received by agreement.

12141 (COM. EX. 1907 was offered and received in evidence.)

12143 LEONARD K. ASTELL, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am an employee of the State Highway Commission of Wisconsin. My classification is senior assistant
12144 engineer and I have been with the Commission about 20 years. My duties there for the first 5 years of the last 8 were that I was assistant construction engineer. More recently I have been in charge of personnel and assistant to the State Highway Engineer. During my employment there, with regard to handling or negotiating for the purchase of cement, I assisted in the taking of bids and the preparation of tabulation of bids from about 1931 until 1935. Since 1935 I have been more or less with the construction department.

Q. Have the tabulation of bids since 1935 been carried on during the time that you were familiar with the making of such tabulations?

A. Well, since 1935 I believe we have only taken 12145 bids once, and that was this year.

Q. Will you state generally what the methods employed by the Highway Commission of Wisconsin have been in the purchasing of cement?

A. Well, I have brought these tabulations and records as directed since 1930, I believe. One of the proposals was taken in 1929, but it was for 1930 requirements, and at that time we advertised for bids on cement, received them, tabulated them. They were presented on a form prepared by us, and we call it a proposal. If awards were made, the proposal was turned into a contract merely by the addition of one or two additional sheets signed by the producers and the Highway Commission.

Q. I understand, then, that when the Highway Commission undertook to buy cement it undertook to buy from manufacturers?

A. That is right.

Q. During what period of time did they buy direct from manufacturers?

A. Well, it had been going on for some time prior to 1930, but I know more about it from 1930, '31, '32 and '33. I believe it was discontinued in about '34.

12146 Q. What do you mean was discontinued,—buying direct from manufacturers?

A. Buying direct from cement companies.

12148 Q. Up to that time what had been the quantity of cement required by the Wisconsin Highway Commission for road construction?

12149 A. Well, as I remember, about 1930, '31 and '32, we used approximately 1 million and a quarter barrels.

By Mr. Wooden:

Q. For the three years combined?

A. No, each year.

Q. Each year. And after the change in policy in 1934, what were the approximate quantities bought by the State direct, the State Highway Commission?

A. They were substantially reduced.

Q. Give us some idea of what the quantity was.

Mr. Zimmerman: Excuse me, but didn't he say they hadn't had any lettings since then, except in 1938?

Mr. Wooden: I believe so.

Mr. Zimmerman: Yes.

By Mr. Wooden:

Q. Can you answer the question?

A. But we bought some cement.

Mr. Zimmerman: Yes, I see.

A. (continuing) There were a couple years there was an agreement between certain cement companies and the Highway Commission that they might extend a previous contract, and we bought, oh, three or four hundred thou-
sand barrels each year, something like that, for
12150 two years.

By Mr. Wooden:

Q. After 1934?

A. That is right.

Q. After those purchases on the extended contracts ran out, then what have been your approximate volume of purchases?

A. We didn't buy any cement then direct until this year.

Q. I show you, Mr. Astell, a number of papers marked for identification as Commission's Exhibits 1908 to 1914, inclusive. Will you state what each of those papers is?

(Handing documents to witness.)

A. Well, 1908 is a photostatic copy of a tabulation of the cement bids received on December 28, 1929, for 1930 construction.

1909 is a tabulation, it is a photostatic copy of the tabulation of the cement bids received on February 18th, 1931, for 1931 construction. These bids were rejected.

1910 is a tabulation and covers the same amounts taken again on March 20th, 1931.

1911 is a photostatic copy of a tabulation of the bids taken on November 28th, 1931, for 1932 construction.

1912 is a photostatic copy of a report of bids taken June 6th, 1933, apparently for 1933 construction.

1913 is a photostatic copy of a tabulation of bids taken
March 9th, 1934, for 1934 construction.

12151 1914 is a tabulation of bids taken on May 12th, 1938, for 1938 construction.

Q. Are those papers photographic copies of original tabulations, official tabulations or abstracts which were

made in the offices of the Highway Commission of Wisconsin?

A. Yes, we made them Saturday morning.

Q. Do you have here the originals from which they were made?

A. These are the originals (indicating).

Q. Do you have also the supporting data containing the original bids from which the abstracts or tabulations you have just identified were made?

A. Yes, I do.

Mr. Wooden: I will offer these exhibits, 1908 to 1914, inclusive, and proffer for checking purposes the original tabulations.

Mr. Leisure: Mr. Wooden, does the supporting data include the invitations?

The Witness: Yes.

Mr. Leisure: Do the contracts show the awards?

The Witness: No, the contracts,—I do not believe they show the awards.

Mr. Zimmerman: That is, the tabulations do not show the awards.

By Mr. Wooden:

12152 Q. Now, would you let me have those in order—

A. Well, this is—

Q. The same order?

A. I think I have them in order. I am not sure. That is 1929.

(Handing documents to counsel.)

Mr. Wooden: Shall I proceed, your honor?

Trial Examiner Norwood: Go ahead.

Mr. Wooden: In connection with the offer just made of the abstracts, I proffer for checking purposes the supporting data which the witness has produced, and which I will ask him to enumerate for the record in the same order that the abstracts were numbered.

A. Well, this one marked December 18th, 1929, contains the proposals of the cement companies for that letting, the letting of that date.

A. (continuing) In instances where a contract was entered into, this also contains the contract. The contract and the proposal are one and the same.

By Mr. Wooden:

Q. And this data you just referred to relates, does it not, to Exhibit for identification, 1808?

12153 A. That is the first one. I believe it is.

Trial Examiner Norwood: 1908?

Mr. Wooden: Yes, 1908.

Q. Do you want on the record, Mr. Astell, a list of the papers or documents contained in that supporting data, as we did yesterday in the case of Illinois?

A. Will I get these back?

Mr. Wooden: Well, they are offered for checking purposes.

Trial Examiner Norwood: He will give you a receipt for it.

The Witness: We are not in any hurry about getting them, but we would like to have them back.

Mr. Withrow: We will see that you get them.

Mr. Wooden: You get a receipt on the record, so to speak, for the documents.

Trial Examiner Norwood: Well, the record shows they were turned over to the respondents.

Mr. Wooden: But the record does not show what is contained in the folders.

The Witness: There is a bid there from every cement company who is indicated on the tabulation of the

12154 bids that they submitted a bid.

Trial Examiner Norwood: Well, go ahead.

Mr. Withrow: There is a pencil note on this (indicating), I see.

The Witness: It says "March". It looks like "March 9th, 1934."

Trial Examiner Norwood: You can ask him about that for the record afterwards when it comes up.

Mr. Wooden: I also proffer for checking purposes the supporting data for the bids of February 18th, 1931.

Trial Examiner Norwood: What was that marked?

Mr. Wooden: That is in connection with Exhibit 1909

Trial Examiner Norwood: In connection with 1909.

Mr. Wooden: (continuing) The supporting data for March 20th, 1931, in connection with Exhibit 1910.

Trial Examiner Norwood: Yes.

Mr. Wooden: The supporting data for November 28th, 1931, in connection with Exhibit 1911. The supporting data for the bids of June 6th, 1933, in connection with Exhibit 1912. The supporting data for March 9th, 1934, bidding in connection with Exhibit 1913, and the supporting data for

the bidding of March 12th, 1938, in connection with Exhibit 1914.

It is understood that these papers are submitted
12155 to the respondents for checking and will be returned to the witness.

(Thereupon the documents referred to were handed to Respondents' counsel.)

Trial Examiner Norwood: It is also the understanding that the respondents will send them direct to the office of this witness. You give them the proper address for that.

The Witness: Yes, sir.

Trial Examiner Norwood: Are there any objections to the proffer?

Mr. Zimmerman: Well, just like that?

Mr. Paulson: Just like that, yes. They are perfectly clear.

Mr. Leisure: We have no objection, subject to check, your honor. We would like to have the invitations.

12157 Q. The invitations that were sent to each bidder,
12158 were they all the same?

By Trial Examiner Norwood:

Q. You didn't change the form throughout the whole series?

A. Oh, yes, it is quite possible that the form for 1938 varies slightly from the form for 1930. I think the variations are minor, but it is quite possible that there are variations.

By Mr. Wooden:

Q. But as regards any particular bidding, the invitations that were sent to each bidder were the same?

A. They were identical.

12160 *Cross-Examination by Mr. Leisure.*

Q. In making the awards, do you make the awards to the lowest bidder, is that the practice?

12161 A. I understand—well, now, I don't make the awards.

The Commission does it.

Q. Yes.

A. I understand that there have been other considerations enter into it at different times, but I am not conversant enough with it to make an authoritative statement.

Q. Do these abstracts, do they show prices at which the contracts were entered into?

A. Not in every instance.

Q. What are the instances where they do not?

A. Well, I can think of one case in 1931 where we took bids and rejected the, and then we took bids again, and if I remember correctly one cement company was low for the entire amount, but they had only agreed to handle a portion of the entire cement. The other companies were permitted to revise their bids downward to meet this competition.

Q. I see. They equalized the new low bid, is that it?

A. That is right.

12164 By Mr. Wooden:

Q. What is the paper I show you that has been marked Commission's Exhibit 1915, for identification? (Handing document witness).

A. That is an extract from the minutes of the State Highway Commission of March 9, 1931.

Q. Is that a certified copy of those portions of the minutes?

A. Yes, it is.

Mr. Wooden: I will offer Exhibit 1915, for identification, in evidence.

Trial Examiner Norwood: Any objection?

Mr. Leisure: No, I have no objection.

12165 Mr. Zimmerman: I haven't the slightest.

(COM. EX. 1915 was offered and received in evidence.)

Cross-Examination (Continued) by Mr. Zimmerman.

Q. Which company was it that was low in all those bids you spoke of?

A. 1931?

Q. Yes.

A. As I remember it, it was Lehigh.

12166 Q. Now, you are quite sure they were low on all?

A. No. Did I say "all?" I meant substantially.

Q. At least, most of them?

A. Most of them.

Q. Marquette was low on one of them, at any rate?

A. Well, I would have to look that up.

12167 Q. I just want to know if there are any.

A. Well, I find two places here; probably there are more, I don't know.

Mr. Zimmerman: Q. At least there are two.

A. Yes. It would take a couple hours to check.

By Mr. Zimmerman:

Q. At least two for Marquette are low?

A. Yes.

Q. So they weren't all uniform?

A. No, they aren't all uniform.

12169 Chicago, Illinois,
December 9, 1938.

12171 LEONARD K. ASTELL resumed the stand and testified further as follows:

12172 Mr. Wooden offered papers for identification at this time, pursuant to the request of Mr. Zimmerman, as part of the arrangement that "we" are working under regarding the receipt of abstracts: Com. Ex. 1916 A to L, inclusive, consisting of the Universal-Atlas Company's proposal on the bidding of December 18, 1929; Com. Ex. 1917 A to L, inclusive, as the proposal of the

12173 Universal-Atlas Co. on the bidding of February 18, 1931; Com. Ex. 1918A to L, inclusive, as the pro-

12174 posal of the Alpha Company on the bidding of March 20, 1931; Com. Ex. 1919 A to L, inclusive, as the proposal of the Petoskey Portland Cement Company on the bidding of November 29, 1931; Com. Ex. 1920 A to M, inclusive, as the proposal of the Dewey Portland

12175-76 Cement Company on the bid of June 6, 1933; Com. Ex. 1921 A to M, inclusive, consisting of the proposal of the Penn-Dixie Co. on the bidding of March 9, 1934; Com. Ex. 1922 A to L, inclusive, the proposal of the Lehigh Portland Cement Co. on the bidding of May 12, 1938.

Trial Examiner Norwood: Before the cross examination, we might dispose of all of these proffers consisting of the abstracts presented yesterday from 1908 to 1914, inclusive, which were accompanied by the supporting data for checking, and the sample bids and specifica-

tions presented this morning, 1916 to 1922, inclusive.

12177 Trial Examiner Norwood: Have you any objections to these proffers?

Mr. Leisure: No objection.

COM. EXS. 1908 to 1914, inclusive, 1916-A to L, inclusive, 1917-A to L, inclusive, 1918-A to L, inclusive, 1919-A to L, inclusive, 1920-A to M, inclusive, 1921-A to M, inclusive, and 1922-A to L, inclusive, were offered and received in evidence.)

12178 *Cross-Examination by Mr. Zimmerman.*

Q. Mr. Astell, you recall possibly that an arrangement was made to let contracts to the lowest bidder on an agreement of the companies to insert a clause in the contract protecting State against further decline in prices that might occur after the contracts were entered into?

A. I believe that was so.

12181 Q. Yes. Now, in 1934 you had a situation where you had some contracts that had been entered into by various companies and you asked them to extend their contracts for purchases, that is, you asked them to extend them for a six months period?

A. We asked them to extend them. I don't remember for how long.

Q. All it meant then, in substance, was that you just continued to buy from them what your requirements were at the same price as they had previously contracted for?

A. That is right.

12182 Q. And that would have implied, would it not, that all the provisions of the previous contracts, including this provision that if there was any lowering in the market price that the state would get the benefit of it?

A. Yes.

Q. So that thus you always secured to the state the benefit of the lowest current market price, so far as was practicable to do so?

12183 A. I believe we did.

12187 *Redirect Examination by Mr. Wooden.*

Q. Mr. Astell, I think you used the year 1932 in speaking of the rejection of bids. Did you mean the requirements for 1932 on bids taken during 1931, or what?

A. I will have to look at those things.

Q. All right.

A. Those tabulation of bids, but I think it was 1931. (After examining tabulations:) It was in 1931 that the bids were rejected, the first bids.

By Mr. Wooden:

Q. When you referred to 1932, was that an inadverent error?

A. If I said that the bids were rejected in 1932, it was an error, yes.

Q. As a matter of fact, did you produce any bids submitted during 1932?

A. I don't think so. I think I produced some bids for 1932 requirements that were submitted late in 1931. It was November 28, 1931, that we took bids for 1932 requirements.

Q. All right. And you took no bids during 1932, is that right?

12188 A. I believe not.

Q. Was it in 1931 when the bids were rejected because the Commission went on record in its minutes that lower prices were being made to other states?

A. It was in 1931.

Q. Did you have in effect at that time this guarantee against decline that figured in some of your proposals for invitations?

A. I believe we did. I am not sure. But that portion of our proposal only referred to a decline in the market where the cement was used, not in other states.

Q. I see. What did you understand or what did you mean in answer to Mr. Zimmerman's question when you referred to the prevailing market price? What did you mean by those words "prevaling market price?"

A. I don't remember using that.

Mr. Zimmerman: Well, I am not going to say whether he did or not definitely.

Mr. Wooden: You did, anyway.

Trial Examiner Norwood: I think the term was used in the question.

Mr. Zimmerman: I think what I had in mind was the price at any of the destinations at which the state was asking for prices.

Mr. Wooden: Well, let me ask:

12189 By Mr. Wooden:

Q. What, if anything, do you understand by the term "prevailing market price on cement"?

A. I presume it would be the price at which cement was sold.

Q. By whom and where and what makes the prevailing price?

A. Well, I don't know that. That is—

Q. Do you remember giving an affirmative answer to Mr. Zimmerman's question involving the use of the term "prevailing market price?"

A. No, I don't.

12190 Q. Showing you Exhibit 1918-G, was that a proposal by the Alpha Company to furnish 500,000 barrels on the bidding of March 20, 1931?

12191 A. That is right.

Q. Did the State bind itself to take any certain proportion of that 500,000 barrel proposal?

A. Prior to the letting or afterwards?

Q. Prior to the letting?

A. No.

Q. Is that the same with other bidders?

A. That is right.

Q. Now, when you extended the proposals, how long a period were they extended?

A. They were extended more than once, and I am not certain that I remember the length of time that they were extended, but I think it appears in the minutes.

Mr. Zimmerman: I think they show six months at a time, Mr. Wooden.

(Handing documents to counsel.)

Mr. Wooden: Yes, I had that six months thing in mind.

By Mr. Wooden:

Q. Were they extended for a period as long as six months?

A. Yes, they were.

Q. And on what occasions?

A. Well, at least two, possibly three.

Q. Can you name them?

A. No.

12192 Q. Can you by reference to any of the papers here?

A. Yes, I think I can figure it out from them.

(The papers referred to were handed to the witness.)

A. (continuing) Here is one. The Commission at their meeting December 13th, 1934, acted to request the cement companies to extend their contracts for six months.

By Mr. Wooden:

Q. Did the bidders extend their contracts for six months on the request of the Commission?

A. Yes, they did.

Q. All of them?

A. I am not sure.

Q. Well, can you say how many did or didn't?

A. No.

Q. I said, which ones did?

Mr. Zimmerman: Give him just a minute to look and I think he will find it.

A. Yes, it indicates here which companies did.

12193 Q. Will you state which companies did extend their proposals?

A. I think the only companies asked for a quotation at that time were those that already had contracts. Lehigh, Manitowoc, Dewey, Marquette, Limestone Products Company, Petoskey Company, Pennsylvania-Dixie, Alpha and Universal.

Q. Do you say that extensions of that sort were requested and granted on other occasions?

A. Yes.

Q. Do you know what occasions they were?

A. Well, there is one referred to in the minutes of the Commission dated March 30th, 1935. It was moved and seconded that the cement companies having contracts with the Commission for the furnishing of the cement requirements for 1934 be requested to extend their contracts to cover the Commission's 1935 requirements.

Q. Did they do so?

A. Yes, they did.

Q. Who did?

A. Universal-Atlas, Limestone, Marquette, Manitowoc, Dewey, Pennsylvania-Dixie, Lehigh, Petoskey and Alpha.

Q. Does that mean that there was a whole year's extension there, as against the six months on the other occasion?

A. I think this refers to extending the contracts to take care of the 1935 requirements. It doesn't seem to

12194 say for how long.

Q. Did the Highway Commission know at that

time what the 1935 requirements were, or could it estimate what they would be?

A. They knew approximately what their requirements would be.

Q. Did they give that information to the companies in connection with their request to cover an extension for 1935?

A. I don't know. I presume so.

Q. In any event, the requirements, you said the Commission knew approximately?

A. That is right.

Q. You mean it would be just an estimate then of what they might need?

A. That is right.

Recross Examination by Mr. Leisure.

Q. Mr. Astell, when Mr. Wooden asked you about the protection on the prevailing market price, isn't this the provision that you had reference to when you answered Mr. Wooden's question, and I am reading now from 12195 Article 10 in Exhibit 1917-C, and I am asking you if this wasn't the provision that was in the other invitations as well:

"It is further specified and provided that if during any period in 1931, while the contract is in force, the successful bidder shall sell his cement F. O. B. any place of delivery named in his contract at a price lower than that named in said contract, such lower price will apply on all shipments made on said contract during such period to such place of delivery."

Isn't that the provision that is in the invitations?

A. You are asking me if that is in all the invitations?

Q. Well, I was trying to connect it up with your testimony which you gave to Mr. Wooden. I am asking you now if that isn't the provision that was provided for for the protection of the State?

A. That was provided for the protection of the State.

Q. Yes.

12196 JAMES McKEAG, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am an attorney at law connected with the Federal
12197 Trade Commission as an Attorney-Examiner and have been occupied in that position for the last assignment since about December 3, 1934. On previous occasion I was also connected with the Commission as an attorney-examiner from May 1918 until May 1921.

Q. During your current connection with the Commission, did you have occasion at any time to make any investigation of conditions in the cement industry?

A. I did.

Q. Will you state when, and in a general way, what you did?

A. I left Chicago, I think, about the 15th of November, 1936 and visited four different cement companies in the next four or five days.

Q. Will you name them?

A. I went to Sandusky, Ohio, but found that the party that I wanted to see was in Cleveland, so I went to Cleveland. That was the Castalia Cement Company and Mr. McKeon I believe is the name of the man.

Q. Just, in a general way, cover the names of the companies.

A. Then I visited the Superior Cement Company at Portsmouth, Ohio, the Pittsburgh Plate Glass Company, Pittsburgh, and the Diamond Portland Cement Company at Middle Branch, Ohio.

Q. Whom did you see at the Diamond Company
12198 at Middle Branch?

A. When I first went there on the 19th of November, 1936, I first saw Mr. Herbert D. Raff, president.

Q. Did you see someone else while you were there too?

A. Yes. Mr. Herbert Raff told me that he was not famliar with all of the present details in the cement industry, and suggested that his son, Richard, who was vice president and sales manager, was out of town that day, but was expected back that night and suggested that I wait over and see him the following day.

Q. What did you do at the Diamond Company office?

A. You mean with reference to Mr. Richard Raff?

Q. Yes.

A. I asked him about conditions in the cement industry, where they sold their cement, and how, and what the competitive conditions were in that territory that he served.

Q. Did you examine any files?

A. Yes.

Q. With his permission?

12199 A. Yes.

Q. Did you make any selections from the files that you examined?

A. I did.

Q. Did you take any steps toward getting copies of the documents selected?

A. He gave me the original copies from his files under an understanding that at some time they would be copied and photostated, and they would be returned to him.

Q. You say you discussed with Mr. Richard Raff competitive conditions in the industry?

A. Yes.

Q. Did you ask him anything about the use of basing points by his company?

A. Yes.

Q. Will you state what he told you in that connection?

A. He stated that the three basing points that they used mostly were Toledo, Ohio; Cleveland, Ohio; and Ironton, Ohio, each of which had a base price of $1.50 per barrel up to January, 1936, when the Cleveland base price was increased to $1.65.

Q. Was the plant of the Diamond Company itself a basing point?

A. No.

Q. Did you ascertain what the principal consum-

12200 ing markets of the Diamond Company were?

A. Well, they were largely in the neighborhood of their plant, in the northern and eastern part of Ohio, slightly into Pennsylvania and West Virginia.

Q. How close was their plant to the City of Canton?

A. About, oh, I should say nine miles. That is within a mile of it one way or the other, I believe.

12201 Q. Did you make any inquiry as to whether or not—as to how the delivered prices in the city of Canton were calculated by the Diamond Company?

A. Yes, I asked him specifically that question.

Q. Will you state what he said in response?

A. He stated that the base price at Canton, Ohio, was determined by the base price at Toledo, Ohio, which was a dollar and a half plus freight rate of 43 cents, plus a charge of 40 cents for cloth sacks, making it, I believe, $2.33.

Q. Did you ascertain what the freight was from the mill to Canton?

A. Minimum freight rate of 25 cents a barrel.

Q. Will you state whether or not the description given of his method of making prices in Canton was typical of his method of making prices elsewhere or not?

12202 A. Yes, he stated that all of their prices were determined by that same method; that is, the base—the price at the base point plus the freight plus the cost of sacks to the place of delivery, comparing the different base points whichever was the lower.

12204 Q. What did Mr. Richard Raff say to you concerning price competition in the industry?

12206 A. He stated that so far as prices were concerned, there was no competition, but otherwise, competition was very keen.

12207 Q. Mr. McKeag, on the occasion of your talk with Mr. Richard Raff, did you have any discussion with him as to the position of his company if selling on an F. O. B. mill basis as against selling on a basing point system?

A. I don't know that I did with Richard Raff. I think I talked that with his father, Herbert Raff, the day before.

Q. What did Mr. Herbert Raff have to say about it?

A. Mr. Herbert Raff explained to me that their cost of manufacture of cement at Middle Branch was higher than some of their principal competitors, such as the Huron Cement Company, because they merely had a six foot limestone vein covered with about thirty-five feet of earth, and consequently their cost of production was high, but owing to their location and the fact that there was a large consumption of cement near their plant, they had a freight advantage which overcome their higher cost of production and, therefore, were able to compete on the basis used in the industry.

12208 The witness identified Com. Ex. 1923 as an original document which Mr. R. D. Raff gave to him

from his file, from the office, as a circular letter addressed to "his" salesmen under that date, February 23, 1935.

Mr. Wooden: I offer it in evidence, your honor.

(Thereupon the paper referred to was handed to Respondents' counsel.)

Mr. Wooden: Give those the next two numbers, please.

12209 (COM. EX. 1923 was offered and received in evidence.)

12211 Q. Did Mr. Raff make any statement to you concerning those two papers which are numbered 1924 and 1925?

A. He stated that they were copies, original copies of documents sent out to their salesmen, stating their policy with reference to the sale of cement.

12212 (COM. EX. 1924 and 1925 were offered and received in evidence.)

The witness identified Com. Exs. 1926, 1927 and 1928, as three original copies of letters sent by Mr. R. D. Raff, to "their" salesmen, stating "their" policy with ref-

12213 erence to the sale of cement as related therein. These were furnished to the witness by Mr. Raff on the occasion of his visit.

Trial Examiner Norwood: Do you offer them?

Mr. Wooden: I offer them, yes.

12214 Mr. Leisure: As to Commission's Exhibit 1926, we object to it being received in evidence, first, on the ground that it is shown to be during the Code period and has to do with a figure under the Code.

Trial Examiner Norwood: Yes.

Mr. Leisure: And, secondly, it should be confined to the company involved because the memorandum indicates that it went from Mr. Raff to his own salesmen, and, therefore, not binding on any other respondent.

Mr. Wooden: You mentioned 1924, Mr. Zimmerman. You were in error on that.

Mr. Leisure: That is Commission's Exhibit 1924.

Mr. Wooden: Oh, yes.

Trial Examiner Norwood: Any further objections?

Mr. Leisure: We have no objection to the other two documents except that the evidence should be confined to the company involved.

(COM. EX. 1926, 1927, and 1928 were offered and received in evidence.)

The witness identified Com. Ex. 1929 and 1930:
12215 as original copies of circular letters to salesmen issued by Mr. Raff of the Diamond Portland Cement Company.

Examination by Examiner Norwood.

He furnished them to the witness.

Examination by Mr. Wooden.

The dates on them are January 1, 1935 and January 3, 1935. The marks indicating a "six" instead of a "five" in pencil are the witness's marks. He put these pencil figures on when he got back to Chicago and studied these documents in connection with the other documents. He concluded that there was a stenographic error in that they were 1936 instead of 1935, so he indicated with a question mark that it should be 1936.

Mr. Leisure: Well, now, I ask that all markings of that character be taken from the exhibits before they are offered in evidence.

Mr. Wooden: As a matter of fact, I am not offer-
12216 ing them at this time, Mr. Leisure, anyway, but I want the witness' identification of them and the marks on the letters.

Mr. Zimmerman: Well, now, may I ask the witness what other documents he compared them with?

The Witness: With the conditions with reference to the sale of cement at that time, also with reference to a delivered price list issued by the Diamond Portland Cement Company which was supposed to have accompanied those letters, which plainly showed 1936.

Examination on Voir Dire by Mr. Zimmerman.

Q. It did not accompany them?
A. One of the letter states so.
Q. Well, was it delivered to you at the same time as the letters?
A. Yes, sir.
Q. Have you got it here?
A. The prices?

Q. Yes, the documents that you compared these things with.

A. Yes. And then, as I recall it, one of those letters refers to Wednesday, January 22, which is not 1935, but is 1936.

Direct Examination (Resumed) by Mr. Wooden.

12217 Q. Now, Mr. McKeag, referring to your interview with Mr. Herbert Raff, did you have any discussion with him as to whether or not his company was a price leader.

A. Yes.

Q. Will you state what he said in that connection?

A. He said that in this territory they were not a dominant manufacturer of cement but followed the lead of others.

Q. You mean his company was not?

A. Was not, was not dominant. I think he said they were probably third or fourth in volume of business, as I remember it.

Q. Did you have any discussion with Mr. Herbert Raff with regard to trucking of cement?

A. Yes, and also with Mr. Richard Raff.

Q. Will you state now what discussion you had with Mr. Herbert Raff and what he said?

A. He stated that Huron Cement Company maintained silos at Toledo, Ohio, and Cleveland, Ohio, to which places they carried their cement from their plant in Michigan by their own boat, and that company permitted trucking of cement from their silos in Toledo and Cleveland.

12219 Q. Had you finished your statement, Mr. McKeag?

A. And he stated that that made it difficult to compete in those communities owing to their low cost of delivery of their cement from their plant to those points, and that they resold that cement at base price plus 25 cents freight charge and plus the cost of sacks.

Trial Examiner Norwood: What base did he mean?

The Witness: Well, whatever base they used, whatever the base price was at either Cleveland or Toledo.

Trial Examiner Norwood: Depending on where he was shipping it.

The Witness: Yes.

Trial Examiner Norwood: I see. Go ahead.

A. And also that at one time they added an extra five cents, that is, an extra five cents per barrel—

Mr. Leisure: I am confused about the witness' use of the word "they."

The Witness: Huron.

Mr. Leisure: It was Huron that sold?

The Witness: Yes. An extra five cents per barrel for trucking.

12220 By Mr. Wooden:

Q. Did you have any discussion with Mr. Herbert Raff as to the effect of trucking in the Canton market?

A. Yes.

Q. Will you state what he told you in that connection?

A. He stated that they had some time previously determined not to permit cement to be trucked from their plant at Middle Branch to Canton or any other place because—

Q. When you say "they" you mean what?

A. Diamond, Diamond. Because they had an experience a short time before where a dealer in Canton, who had a number of trucks, old trucks, which he had

12221 used for some time, had been fully depreciated so far as his cost of doing business was concerned, came to their plant and trucked cement therefrom to Canton, and his only expense of doing it was the cost of the man to drive the truck and gas and oil, whereas another competing dealer in Canton did not have the trucks and was obliged to hire trucks and men, and that it was an unfair condition so far as that dealer was concerned, and, consequently, they decided to eliminate all trucking.

Q. Did he state wherein it was unfair?

A. Because the dealer did not own his trucks, was at a disadvantage because his cost of trucking the cement from the plant to Canton was higher than the other one.

Q. I believe you said you also talked to Mr. Richard Raff about trucking. What did Mr. Richard Raff have to say about it?

A. Well, Mr. Richard Raff also said that Huron maintained silos at Cleveland and Toledo, and that originally they confined trucking solely to Lucas County, in Toledo, and Cuyahoga County in Cleveland.

Mr. Leisure: Is the witness now speaking of what Huron did?

The Witness: This is what Mr. Richard Raff told me what Huron did.

Mr. Wooden: All right, go ahead.

A. But at one time, in 1935, Huron, I believe,
12222 trucked in some twelve additional counties surrounding Lucas County to which trucking was permitted, and then it was subsequent that those twelve additional counties were later removed from that privilege, and then about a year later, when some special construction job was contemplated, and in some county adjoining Lucas County, they reinstated and added five counties which were entitled to the privilege of obtaining cement by truck at their Toledo silo.

12223 Q. Now, did you mention one of the companies that you visited in your investigations as the Pittsburgh Plate Glass Company?

A. I did, yes.

Q. Whom did you see there?

A. Assistant sales manager, Mr. Sippey, I believe, if I remember the name right.

Q. What did you do at that place?

A. I talked to Mr. Sippey about competitive conditions and also asked the privilege of looking through his office file with reference to the sale of cement.

Mr. Leisure: Could we have that date fixed again?

Mr. Wooden: He gave it.

By Mr. Wooden:

Q. When was that?

A. That was the 18th of November, 1936.

Q. Did you ascertain whether or not the Pittsburgh Plate Glass Company mill was a basing point mill or not?

Mr. Leisure: Now, I object to that kind of a question. The witness has told us that he talked to Mr. Sippey, and the only theory that he should be allowed to testify here at all about that conversation is that he said certain things to Mr. Sippey and Mr. Sippey said certain things to him.

Mr. Wooden: I will change the word "ascertain"
12224 to "did you ask Mr. Sippey."

Trial Examiner Norwood: Yes, all right.

A. Yes.

By Mr. Wooden:

Q. And what did he say?

A. He stated that they had but one plant at Zanesville, Ohio, which was not a basing point.

Q. Well, can you say whether or not their plant is in Zanesville or nearby?

A. It was somewhere near, in the vicinity of Zanesville. I don't know just where it was with reference to it, but they called it Zanesville.

Q. Did you discuss with Mr. Sippey the question or the policy of his company as to whether it was a leader in the making of prices?

A. Yes.

Q. What did he say?

A. He said that they were not a leader in the cement industry.

Q. Did he say anything further in regard to the policy of his company with regard to price leadership?

A. I don't recall just at this moment if he did.

Q. Did you discuss with Mr. Sippey at that time the question of price competition in the industry?

A. I did.

12226 A. I did.

By Mr. Wooden:

Q. Will you state what Mr. Sippey said to you, if anything, as to the extent of the price competition in the industry?

12227 A. He said that there was no competition so far as prices were concerned.

12230 Q. What are the papers, Mr. McKeag, I now show you, marked 1931 and 1932, for identification?

(Handing documents to witness)

12231 A. Those are copies made by Mr. Sippey of letters, original letters and carbons, original carbons, appearing in the file which he produced and showed to me on that occasion.

Mr. Wooden: I offer those in evidence.

By Trial Examiner Norwood:

Q. Who did the copying?

A. He did, or his stenographer right there in the office, and he gave them to me right there.

12233 Mr. Leisure: Your Honor, these two exhibits pending, Commission's Exhibits 1931 and 1932, 1931 being a letter to Mr. Reiter of The Cement Institute, a sales manager of the Pittsburgh Plate Glass Company, and he replied March 16, 1936, Exhibit 1932. The exhibits have to do with contract checking.

12235 (COM. EX. 1931 and 1932 were offered and received in evidence.)

12236 By Mr. Wooden:

Q. Mr. McKeag, what are the papers I show you, marked Commission's Exhibits 1933 and 1934, for identification?

(Handing documents to witness).

A. Those are each original mimeograph copies of announcements made by the Pittsburgh Plate Glass Company on the respective dates.

Q. Where did you get them?

A. From Mr. Sippey.

Mr. Leisure: We have no objection to those, your honor.

(COM. EXS. 1933 and 1934 were offered and received in evidence.)

Q. Mr. McKeag, did you discuss with Mr. Sippey
12237 any of the points involved in those or covered by those announcements of sales policy which are embodied in Exhibits 1933 and 1934?

A. I did.

Q. Will you state what was said by Mr. Sippey?

Mr. Leisure: Was it stated this morning who Mr. Sippey was, what his official position was?

Trial Examiner Norwood: Yes.

The Witness: Assistant sales manager.

Mr. Leisure: Of what company?

The Witness: Pittsburgh Plate Glass Company.

He stated that he could see no justification for the difference in the sale by cement companies direct to contractors in construction jobs located outside of the
12238 municipality and within the municipality.

Q. Now, Mr. McKeag, I believe you said you also
12239 called on the Castalia Portland Cement Company?

A. I did.

Q. And I believe you mentioned Mr. McKeon?

A. That is right.

Q. Who was he?

A. He was the—well, he was the chief executive officer of that Castalia Company. What his title was, I have forgotten, but he was in full charge of the sales of that company.

Q. Did you ascertain from him where his plant was located?

A. Yes, his plant was located near Sandusky, Ohio,

some small town located five or six miles, or something such as that outside of Sandusky.

12240 Q. Did you ask or did Mr. McKeon state whether
12241 or not at the time you called on him the Castalia Company was selling cement?

A. He said they were.

Q. Did he state where they were selling it?

A. Yes, they had one salesman traveling, calling on dealers located outside of the City of Cleveland, and he, personally, took care of all local business in Cleveland.

Q. Did you discuss with him the subject of whether or not or for how long the Castalia plant had or had not been producing cement?

A. Yes. He stated that their plant had shut down some four or five years previous to my call.

Q. Did you ask or did Mr. McKeon state what the arrangement was by which they were still selling cement, although their plant had been closed down for four or five years?

A. Yes, he stated he had an arrangement with the Medusa Cement Company to sack Medusa cement in Castalia bags, and they were still selling it in that way.

12242 Q. What is the paper I show you, marked Com-
12243 mission's Exhibit 1935, for identification?

(Handing document to witness)

A. That is an original printed anonuncement of sales policy. It is dated April 13th, 1935, which was delivered to me by Mr. McKeon when I called on him.

Mr. Wooden: I offer that in evidence.

12244 Trial Examiner Norwood: Any objections?

Mr. Leisure: No objections.

(COM. EX. 1935 was offered and received in evidence.)

Q. Mr. McKeag, did you call upon the Superior Cement Corporation?

A. Yes.

Q. In connection with your inquiry?

A. I did.

Q. Whom did you see there?

A. Mr. Con Hearn, H-e-a-r-n.

Q. Who is he?

A. Sales manager.

Q. Did you ask Mr. Hearn anything about the corporate relations between the Superior Cement Corporation and the Wellston Iron & Furnace Company?

A. Yes.

Q. Will you say just what was said?

Mr. Leisure: Before we get to that, did the witness say he was assistant sales manager?

The Witness: No, sales manager.

A. He stated that the name of that corporation
12245 had been changed from the Wellston to the Superior Cement Company some three or four years previously.

Q. Did you understand from that, that it was the same corporation, only a change in name?

A. That is my recollection of it, yes.

Q. Did you ask Mr. Hearn whether the Superior Cement Corporation had a basing point at its mill?

A. It had a basing point at Ironton, Ohio, which was about 18 miles from where their mill was located.

Q. Did you understand that Ironton was a basing point established by the—

A. No, not by Superior.

Q. —by the Superior Company?

A. No.

Q. What did you learn from Mr. Hearn in that connection?

A. That was also the location of the plant of the Alpha Cement Company, I believe, which is a rather large cement company, and they established the base at Ironton, Ohio.

Q. Did you discuss with Mr. Hearn the method employed by his concern in making prices?

A. You mean prices for their salesmen to carry around?

Q. Yes, or to quote to customers.

A. Yes.

Q. What did he say in that connection?

A. He stated that he took advantage of the offer
12246 of the Universal-Atlas Portland Cement Company to furnish to one-plant-cement mills printed copies of delivered prices for cement and to various points located in that general neighborhood.

Q. Was that a freight rate proposition or—

A. It was a delivered—

Q. —or a delivered price or what?

A. I believe it was, as I remember it, it was either—it was either a delivered price for cement at each point or else it was the freight rate applicable from the different

base points to that delivered point. Now, which one of them, I do not recall.

12247 A. He stated that they procured from the Universal-Atlas Cement Company the price books showing from which cement prices were determined at different points of delivery. That is as near as I can recall what he said on that subject.

By Mr. Wooden:

Q. Did you ask Mr. Hearn what, if any, basing points his concern used in the making of prices?

A. Yes.

Q. What did he say?

A. He stated that they had three basing points which governed their delivered prices for the cement distributed by them in their territories; namely, Ironton base point, $1.50, Pittsburgh, Pennsylvania, base price, $1.65,

12248 Mitchell, Indiana, where the base price, as I recall it, was $1.55. I am not sure about that last one. That is my recollection at the present time.

Q. Did you discuss with Mr. Hearn anything on the subject of price leadership in the industry?

A. Yes.

Q. What did he say on that?

A. Well, he state—

Mr. Leisure: So that I won't have to interrupt after each question, may I have a general objection, the objection being that we are merely having one-half of a conversation related here, whereas we should have the whole conversation?

Trial Examiner Norwood: Yes. You may have your exception to this and all similar questions and answers.

By Mr. Wooden:

Q. You may state, Mr. McKeag, if you can, just what you said and what he said.

A. Well, I asked him what position his company was in in the sale of cement in the territory in which they sold cement, and he stated that they were a very small cement concern, and they had no effect whatever, could not affect prices in any locality; that they merely followed prices established by others who were larger and more dominant in the industry.

Q. Did you have any discussion with Mr. Hearn

12249 on the subject of diversion in transit or reconsignment?

A. Yes.

Q. Will you state what you said and what he said in that connection?

A. I asked him about diversion of cars enroute to points of destination, and he showed me a stamp which was attached to all of their bills of lading, which he said was put on them, reading substantially as follows, in this language:

"This is the property of the consignor. Same shall not be reconsigned or diverted without the permission of the consignor."

Q. Did you ask him anything as to the purpose of such a stamp being used?

A. Yes.

Q. Will you state what he said and what you said in that regard?

A. He said it was for the purpose of protecting the dealers, to prevent one dealer from encroaching on the territory of another dealer.

Mr. Wooden: Give this the next number.

(The paper writing above referred to was thereupon marked for identification as Commission's Exhibit 1936.)

By Mr. Wooden:

Q. What is the paper marked "Commission's Exhibit 1936," for identification?

12250 A. That is a printed announcement of a sales policy dated April 15, 1935, by the Superior Cement Corporation stating "Our sales policy—"

Trial Examiner Norwood: Where did you get it?

The Witness: From Mr. Hearn.

Mr. Wooden: I offer it in evidence, your Honor.

(The exhibit referred to was handed to Mr. Leisure.)

Mr. Leisure: No objection.

(COM. EX. 1936 was offered and received in evidence.)

Q. Mr. McKeag, did you ascertain from Mr. Hearn who the president and treasurer of the company was?

A. I did.

Q. Who was it?

A. One name I have in mind was Feigenstein or Feigenheim, or some such name as that, but I couldn't be specific about it.

Q. Was it Kanengeiser?

A. It might have been, some peculiar name of that kind.

Mr. Wooden: Might it be stipulated that the president and treasurer of the Superior Cement Corporation
12251 in November, 1936, was Fred R. Kanengeiser, K-a-n-e-n-g-e-i-s-e-r?

Mr. Leisure: Subject to check.

Mr. Wooden: Subject to check.

That is all I have of Mr. McKeag.

Trial Examiner Norwood: Examine him.

Cross-Examination by Mr. Leisure.

Q. Mr. McKeag, in testifying this morning with regard to your conversation with Mr. Raff, and I do not recall which Mr. Raff you referred to, you mentioned that he told you certain basing points were used up to 1936. Do you recall that testimony?

A. Yes.

Q. Now, when you say "up to," did he tell you anything about the beginning of the period or—

A. No.

Q. I mean, I am trying to find—

A. Well,—

Q. You have limited it at one end; I am trying to find out what the other is.

A. Prior to January, 1936, the basing point at Ironton, Cleveland and Toledo were all the same a dollar and a half.

Q. Yes. Covering what period, Mr. McKeag?

A. He didn't mention how long prior to January 1936.

12252 Q. That is, prior to 1936, at least, in 1935, they were the same?

A. That is my—

Q. He didn't tell you whether they were the same in 1934 or not?

A. No, I didn't go into that with him at all.

Q. These exhibits here, Commission's Exhibits 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1933, 1934, 1935 and 1936—those were received by you personally from Mr. Raff and from Mr. Sippey and from Mr. Hearn?

A. That is right.

Q. And Mr. McKeon of the Castalia Company?

A. Yes.

12256 By Mr. Leisure:

Q. When you talked to Mr. Raff, that was back in 1936?

A. November,—I talked to Herbert Raff November 19th, 1936, and to Mr. Richard Raff on November 20th.

Q. Now, Mr. Wooden asked you what, if anything, he stated about price competition. Do you recall what you asked him?

A. I asked him the question, was there any competition in prices in the sale of cement.

He said, "No, there is no competition in prices in the sale of cement."

Q. Are you positive now that that is the question you asked him?

A. Yes, sir.

Q. Or did you ask him how he got information as to prices?

A. No, I asked him that specific question about price competition. About price changes, I asked him about that in addition.

Q. What did he say to that?

A. He said, he told me about the basic price change in Cleveland the preceding January, and, well, there is some more to it too. He stated that right around New Year's Day, 1936, he heard quite a number of rumors that Huron was going to increase the base price at Cleveland, and the day following he was advised that Lehigh had already in the hands of their dealers quotations in writing
12257 showing an increase in the base price at Cleveland, and he spent several days telephoning, trying to find out and verify it and finally he did.

Q. So you understood that he had found out about this price information from his salesmen in the field, is that correct?

A. And also from dealers.

Q. And from dealers. Did you have any conversation with him as to whether or not he ever had any conversations with his competitors as to price changes, whether he was ever consulted about that by his competitors?

A. He said that he had not been. That is my recollection of it; at any rate, he didn't give me any instance where they had, as I recall.

Q. Now, I think you said—well, let me put it this way: Did you ask him whether or not the prices in Ohio were fair prices or not?

Trial Examiner Norwood: Can you answer that?

A. No, I did not.

By Mr. Leisure:

Q. Do you recall any discussion with him about the fairness of prices, whether or not you discussed that with him?

A. The only point that I took up was prices at Canton, Ohio, which was right next door to their cement plant.

Q. What was your conversation with respect to that?

12258 A. I asked him whether or not he couldn't sell cement in the City of Canton, delivered in the City of Canton cheaper than his competitors, and he said, no, he could not. He didn't say why he couldn't, but he simply said he couldn't because prices there were governed by the base price at Cleveland or Toledo.

Q. In connection with that, was there any discussion on his part to the effect that he felt prices were too low?

A. No, he didn't say anything one way or the other on that, so far as I recall.

Q. Did he say anything about whether or not he was getting a fair return on his investment? Did he say anything to you with regard to that subject?

A. I think I discussed with the elder Mr. Raff—discussed that with the elder Mr. Raff the day before.

Q. Yes. What did he say? What did you say and what did he say?

A. I asked him about profit on the manufacture, and he said in the preceding year, 1935, they had shown a small but reasonable margin of profit. He didn't say what it was or how large, that was his expression of it, but during the year 1936 they had only operated their plant about eight months during the year, and he didn't know how they were going to come out during that year.

Q. Did he say anything about any other years?

12259 A. No, not so far as return or profits are concerned.

Q. Well, did he indicate to you in this conversation whether or not he felt these prices he had to meet in the market if he wanted to sell any cement were too low? Did he say anything about that?

A. No, I think he had in mind the volume of sales, because they couldn't run their plant continuously and keep the men employed. He was very much worried about that, having to lay off their men and lose some of their good men, and he said those you didn't employ and pay a sal-

ary to, they were put in bad circumstances and it worried him quite a bit.

Q. Now, did you understand, as a result of your discussion with Mr. Raff, that his salesmen used the basing points to quote prices to their customers?

A. They had a schedule showing the delivered price at all points covered by them.

Q. That is, Mr. Raff told you the fact, did he not—

A. He told me—

Q. (continuing) —that these salesmen were furnished with lists?

A. Yes.

Q. Of delivered prices?

A. Yes, and he furnished me with a copy of their current delivered price list.

Q. And he told you that the salesmen did not do
12260 any calculating of the prices, but they followed those price lists?

A. They followed those price lists. The delivered price calculations were made in their home office at Middle Branch.

12271 O. N. LINDAHL, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

12272 I am comptroller and secretary of Universal-Atlas Cement Company. I have been comptroller and secretary since about March 1, 1937. Prior to that I was auditor and assistant secretary for about 20 years.

Q. Did you receive as secretary of the Universal-Atlas Company a subpoena duces tecum from the Federal Trade Commission?

A. Yes, sir.

Q. Calling for the production of certain specified papers?

A. Yes, sir.

Q. Have you brought those papers here today?

A. I have brought those papers with the exception of several, I think five, that we could not locate in our files.

Q. Have you exhausted the search for them so that you think there is no further use of any further search?

A. Now so far as I know, we have exhausted our search.

Q. And you have produced all but five, you think?

A. Yes, sir.

Q. Do you have the ones with you that you have brought?

(The witness hands a number of papers to Mr. 12273 Wooden.)

Mr. Wooden: I will ask the reporter if he will give these various documents submitted by the witness a number, for identification, that is, separate numbers in so far as the rules call for them.

Trial Examiner Norwood: I am going to ask you to arrange those according to the dates.

Have you arranged them according to the dates?

The Witness: I have arranged them according to the way they are listed in the subpoena.

Mr. Wooden: They are not necessarily related, your Honor.

Trial Examiner Norwood: Well, go ahead and number them.

(The paper writings above referred to were thereupon marked for identification as Commission's Exhibits 1937 to 1940, inclusive, 1941-A to E, inclusive, 1942 to 1950, inclusive, 1951-A and B, and 1952 and 1953.)

Mr. Wooden: Your Honor, I am submitting to you the papers which the witness has produced and which have been numbered as Commission's Exhibits 1937 to 1952, inclusive, for identification, for your determination as to whether they are relevant and material to the issues in this case, and with the request that counsel for both sides have an opportunity to examine them for the pur- 12274 pose of themselves determining whether there are any portions of these papers or any of these papers which they desire to offer in evidence.

Trial Examiner Norwood: Do you wish me to determine that now?

Mr. Wooden: If you can sufficiently determine the general question now, I would like you to do so without taking a great deal of time.

Trial Examiner Norwood: Yes.

Mr. Wooden: Your Honor, might I ask the witness a question interrupting you for a moment?

Trial Examiner Norwood: Go right ahead.

By Mr. Wooden:

Q. Mr. Lindahl, these papers which have been given the numbers, for identification, that have just been recited, did you produce them from the files of the Universal-Atlas Company?

A. Yes, sir.

12275 Trial Examiner Norwood: I wish to ask a question about this Commission's Exhibit 1942-A to E. What is that? Do you know what that is? It is headed, "Method of Marketing Cement in Texas."

The Witness: That is one of the papers called for in the subpoena.

Trial Examiner Norwood: Well, do you know

12276 what it is?

The Witness: Personally, I don't know what it is.

Trial Examiner Norwood: Did your company ever use it in any way?

The Witness: I suppose they did.

12277 Trial Examiner Norwood: The papers all appear to be relevant. There may be some question about one or two that might require some explanation. We will rule upon those points when they are offered in evidence. I shall retain them and allow counsel on both sides to examine them.

By Mr. Wooden:

Q. Mr. Lindahl, will you take the subpoena duces tecum which you have received and read the description

12278 of the items which you were unable to produce?

A. Just read it?

Q. Yes.

A. "A letter from T. B. Warden, Engineer-Manager, Texas Cement Industries, 702 Littlefield Building, Austin, Texas, to Mr. W. R. Blair, Chairman, and Mr. C. H. Boice, Member of the Executive Committee, dated September 19, 1936." And then, in brackets, "Received stamp dated December 21, 1936."

"A document in mimeographed form consisting of ten pages entitled, 'A Public Relations Plan for The Cement Institute,' dated April 10, 1934."

Q. Just a moment.

Mr. Wooden: I would like at this time to ask that the Institute furnish a copy of that document as described therein.

A. "A carbon copy of a letter to Mr. C. H. Boice from William R. Blair, South Western Portland Cement Company, El Paso, Texas, to 'Dear Mr. Merrill,' dated December 22, 1936:

"A letter from G. H. Zimmerman, President, Lumbermens Association of Texas, to all members, entitled, 'Distribution Statement for Cement,' dated at Waco, Texas, April 15, 1935.

"Original letter from John L. Senior, president, to
12279 Mr. B. F. Affleck, President of the Universal-Atlas Cement Company, 208 South LaSalle Street, Chicago, dated September 8, 1930, and a copy of Mr. Affleck's reply thereto under date of September 8, 1930, signed 'B. F.A.' addressed to 'Dear John.'"

Q. Are the documents which you did produce the ones described in the subpoena?

A. I believe they are.

Q. Did you produce some documents in the form of copies as distinguished from originals or distinguished from the form in which they were called for by the subpoena?

A. Yes, sir.

Q. Will you state what items those were?

A. I have in my memorandum here a copy furnished of a letter from Mr. C. H. Boice, Sales Manager, to "Personal O. H. D. Rohwer, Assistant General Sales Manager, Chicago," entitled, "Texas Cement Industries, dated February 27, 1936."

That is what you want, is it?

And carbon file copy of a letter from Ben G. Affleck, President, Universal Atlas Cement Company, 208 South LaSalle Street, Chicago, Illinois, to F. W. Kelly, President, North American Cement Corporation, 40 Howard Street, Albany, New York, dated March 4th, 1932:

12280 Trial Examiner Norwood: Now, that white paper there, statement of policy, that is among those papers, what was it produced as being?

What is the number of that? What is that white paper there, what is the number of it?

Mr. McFadden: 1942, I think.

Trial Examiner Norwood: Do you have it over there?

Mr. Leisure: Is this it?

(Handing document to the Trial Examiner)

Trial Examiner Norwood: Yes.

By Trial Examiner Norwood:

Q. This paper, marked Exhibit 1942-A to E, what was that produced as being?

A. The method of marketing cement, Texas.

Q. That is all the description?

A. That is the heading of it.

Q. Well, now, what was that letter I showed you which was marked 1952,—how was that described in the subpoena?

A. I don't recognize it by that number, sir.

Mr. Wooden: 1942, isn't it?

Trial Examiner Norwood: No, it is a letter.

Mr. Wooden: Well, this is 1952. Now, which one do you mean? Do you mean still another one, your honor?

12281 Trial Examiner Norwood: It was a letter that was very close to that one, unsigned. I showed it to him once. Oh, this (indicating) is it here.

By Trial Examiner Norwood:

Q. This letter to Mr. F. W. Kelly, president, North American Cement Corporation, dated the 4th of March, 1932, and marked Exhibit 1953, how is that described in the subpoena?

A. The subpoena describes that as carbon file copy of a letter from Ben G. Affleck, president, Universal-Atlas Cement Company.

Q. Yes. Does it give the date?

A. It gives the date, March 4th, 1932.

Q. Does it give the addressee?

A. As F. W. Kelly.

Trial Examiner Norwood: Yes. Well, that is what I wanted to know. Thank you. Go ahead.

I think that, to make this record complete, that this subpoena duces tecum should be incorporated in the record.

12282 Trial Examiner Norwood: Well, this belongs in the docket. I just want to put the description in, and it is not very long.

The descriptions in this subpoena, heretofore identified and referred to, are as follows:

Memorandum from C. H. Boice, Sales Manager, entitled "Copy

Geo. G. Smith

Black-Brollier Company
4616 Main St.—Houston"

dated July 3, 1937.

Memorandum signed J. C. Bradburn, with date 6-29-37, entitled "Black-Brollier Co., 4616 Main St., H. 2103".

Document bearing an exchange of teletype communications which opens with the statement: "What price are you quoting the Kansas City Southern RR. at Beaumont, Texarkana and Shreveport" and which closes with the
12283 statement: ". . . So believe that is the price U should quote or authorize us to quote for U End

MHH

OK End Thanks HNL
OK".

Memorandum from C. H. Boice, Sales Manager, to "Smith" entitled "Trucking—Houston", dated September 28, 1937.

Memorandum from "Bingham" to C. H. Boice, entitled "Trucking", dated at Houston 9-23-37.

Document entitled "Method of Marketing Cement—Texas"

which opens with the following statement:

"The method of marketing cement to the following buyers and classes of work shall be that specified herein for such class:"

and which ends with the statement

"11—Miscellaneous Work:

(a) Purchases not specifically covered in foregoing classes of buyers or work, regardless of character of purchases or location of work:	Sell thru Dealer for 15 days' delivery"

12284 dated September 10, 1935.

Letter from C. H. Boice, Sales Manager, to "Personal, O. H. D. Rohwer, Asst. General Sales Manager, Chicago, entitled "Texas Cement Industries" dated February 27, 1936 (Received stamp dated Feb. 28, 1936).

Letter from T. B. Warden, Engineer-Manager, Texas Cement Industries, 702 Littlefield Building, Austin, Texas,

to Mr. W. R. Blair, Chairman, and Mr. C. H. Boice, Member Executive Committee, dated September 19, 1936 (Received stamp dated Sep. 21, 1936).

A document in mimeograph form consisting of ten pages, entitled "A Public Relations Plan for the Cement Institute", dated April 10, 1934.

Carbon copy of a letter to Mr. C. H. Boice from Wm. R. Blair, Southwestern Portland Cement Company, El Paso, Texas, to "Dear Mr. Merrill", dated December 22, 1936.

Letter from Universal Atlas Cement Company, Waco, Texas, "to the trade", dated July 25, 1935, which opens with the statement "To enable dealers to participate in cement distribution . . . " and which also includes the statement "We consider the definition of an equipped cement dealer to be as follows:"

Letter from G. H. Zimmerman, President, Lumbermen's Association of Texas "To All Members", entitled
12285 "Code Distribution Statement For Cement", dated at Waco, Texas, April 15, 1935.

Original letter from John L. Senior, President, to Mr. B. F. Affleck, President, Universal Atlas Cement Company, 208 South LaSalle Street, Chicago, dated September 8, 1930, and copy of Mr. Affleck's reply thereto under date of September 8, 1930, signed "B. F. A.", addressed to "Dear John".

Copy of letter from O. H. D. Rohwer, Asst. General Sales Manager, to F. T. Wiggins, Birmingham, entitled "W. Horace Williams Company, New Orleans", dated July 28, 1936, cc to C. H. Boice.

Letter from J. J. Bradley, Traffic Department, Universal Atlas Cement Company, Birmingham, Alabama, to C. H. Boice, Sales Manager, Waco, dated May 21, 1937.

Letter from C. H. Boice, Universal Atlas Cement Co., Waco, Texas, to O. H. D. Rohwer, Asst. General Sales Manager, Chicago, dated December 17, 1934, entitled "Trucking".

Document dated July 1, 1936, bearing an exchange of teletype communications and which opens with the statement: "This is Univ Atlas, Chgo. This is Waco office Scovel Atco Plant . . ."
12286 and which closes with the statement ". . . and Atco which for sometime had been $1.80 Hull End OKOK".

Letter from C. H. Boice, signed Mac Hull, Sales Manager, Universal Atlas Cement Co., Waco, Texas, to O. H. D. Rohwer, Asst. General Sales Manager, Chicago, dated February 6, 1936.

A one-page tabulation entitled "Fair Distribution of Colorado River Project—Texas", signed "CJ", dated 2/4/36.

Letter from C. H. Boice, Sales Manager, Universal Atlas Cement Company, Waco, Texas, addressed to "Personal—Private, O. H. D. Rohwer, Asst. General Sales Manager, Chicago", dated April 17, 1936.

Document entitled "Price Sheet", dated January 7, 1937, consisting of a list of basing points and basing point prices with explanatory notes thereto.

Carbon file copy of a letter from Ben G. Affleck, President, Universal Atlas Cement Company, 208 South LaSalle Street, Chicago, Illinois, to F. W. Kelley, President, North American Ce ent Corporation, 40 Howard Street, Albany, New York, dated March 4, 1932.

By Mr. Wooden:

Q. In some cases, Mr. Lindahl, have you produced photographic copies of the documents called fo. in
12287 the subpoena, as distinguished from the originals?

A. Yes, sir.

Q. Mr. Lindahl, I am showing you a paper marked Commission's Exhibit 1954, for identification. Will you state what you know about it?

A. I don't quite get what you mean by what I know about it.

Trial Examiner Norwood: What is it?

By Mr. Wooden:

Q. I mean, what is the paper and did you have any connection with its preparation?

A. Personally, no.

Q. Did you have any connection with its preparation in your department?

A. It is headed up—

Q. You don't need to read the contents or any part of it.

12288 Mr. Leisure: I don't understand the last question. Counsel asked him if he had any connection with the preparation of it. The witness said, no.

Mr. Wooden: He said, "Not personally", and then I followed that up and asked: Was it prepared in his department and did he have any connection with it.

By Trial Examiner Norwood:

Q. Tell us what that paper is, if you know, without stating its contents.

A. It is just a memorandum of certain shipments in certain years.

Q. Does that relate to your company in any way?

A. It is headed up to indicate that it does.

Mr. Wooden: I am asking the witness to state
12289 what he knows about its preparation.

The Witness: Well, I can't say definitely that I know anything about its preparation.

Q. Did you ever use it?

A. Personally, no, sir.

Q. Do you know of its being used in your department?

A. No, sir.

By Mr. Wooden:

Q. Do you recall, Mr. Lindahl, the occasion of a visit by Mr. Royal, representing the Federal Trade Commission?

A. Yes, sir.

Q. Were you called in on that occasion?

A. On some matters, yes.

Q. Were you asked by Mr. Stone to prepare a statement, such as you have before you?

A. Not by Mr. Stone, no, sir.

Q. By whom, if anyone?

A. We were asked for certain statistics, I don't remember now what they were, by one of Mr. Stone's subordinates, and as I recall, all requests came to me personally, I did not furnish them.

12290 Q. Was that paper prepared under the circumstances you have just indicated?

A. I can't say. I have no recollection of this.

12293 Mr. Leisure: I think the procedure suggested by Mr. MacIntyre is a good one to follow.

On November 15th Mr. Pickford, Secretary of the Medusa Portland Cement Company, presented certain documents to the Examiner in the present proceeding, pursuant to a subpoena duces tecum served upon him.

Mr. Pickford submitted additional documents on
12294 November 18th, in further compliance with the subpoena, at which time a statement was made that

an additional search was being made to determine whether or not there were any further documents which were called for in the subpoena. These additional documents which we are now submitting were found, and I am now submitting these documents to the Examiner under the same conditions and with the same objections under which we have submitted all subpoenaed material.

These documents constitute what we believe to be a complete response to the subpoena duces tecum served on Mr. Pickford. If, however, additional documents are found, they will be submitted when found.

Now, in regard to numbering these, I know we are all interested in saving space on the record. I wonder if we couldn't number them certain numbers to other numbers without physically setting out page after page of numbers.

Mr. MacIntyre: I think that could be done, except where there would be more than one page then it would be numbered showing A, B, C, whatever it is.

Trial Examiner Norwood: Well, the papers will now be submitted?

Mr. MacIntyre: May I ask Mr. Leisure one question in that connection, your Honor?

12295 These papers you are now submitting in response to the subpoena duces tecum from the Medusa Portland Cement Company?

Mr. Leisure: That is correct.

(Thereupon the documents referred to were handed to the Trial Examiner by Mr. Leisure.)

Trial Examiner Norwood: Is that all of them?

Mr. Leisure: Well, I thought there were more.

Trial Examiner Norwood: Is this all?

Mr. Leisure: Yes.

Trial Examiner Norwood: The papers are submitted and are marked for identification as follows; from Commission's Exhibit 1955 to 1973, both inclusive.

(Certain papers above referred to were thereupon marked for identification as "Commission's Exhibits 1955, 1956, 1957-A and B, 1958, 1959, 1960, 1961-A and B, 1962, 1963-A and B, 1964-A and B, 1965-A and B, 1966-A and B, 1967-A and B, 1968-A and B, 1969-A and B, 1970-A, B and C, 1971-A and B, 1972-A and B, and 1973.")

Trial Examiner Norwood: I shall retain these and determine their materiality and relevancy, and we shall proceed as heretofore in similar cases.

Mr. MacIntyre: Now, if your Honor please, we understand from the counsel for the respondents that
12296 they have certain other papers here today that they are ready to submit in response to a subpoena duces tecum that was served upon The Cement Institute in January of 1938, calling for certain communications which had passed between cement manufacturers who are respondents in this case, and who are members of The Cement Institute, and Professors Clark and Burns.

We particularized certain documents that we felt had not been submitted on that subpoena during the hearing at Los Angeles, and we again called attention to those documents during a hearing in Washington, D. C., this fall.

If the papers are now ready for submission, we would like to have those numbered for identification at this time and handled in the same way as this preceding group of papers which has been submitted from the files of the Medusa Portland Cement Company on this subpoena.

Mr. Leisure: Your Honor, we have brought those pursuant to our statement in Cleveland,—

Trial Examiner Norwood: Yes.

Mr. Leisure: —but we haven't carried them down to the court room each and every day, and we don't have them in the court room at this moment. If Mr. MacIntyre will set any designated time on any day of the hearing
12297 that he would like to take up the time to do this, we will bring them down from the hotel and have them submitted.

Trial Examiner Norwood: Will the counsel bring them in at 10:00 o'clock tomorrow morning and we will receive them then?

12298 Chicago, Illinois,
December 10, 1938.

12300 Mr. Leisure: On June 20th, 1938, at pages 9062 and 9065 of the record, Mr. MacIntyre asked Mr. Leonard of the Riverside Cement Company for certain maps referred to in Burns and Clark letters.

At a later date Mr. MacIntyre requested counsel for the Institute to supply these maps.

The production of such documents has been complicated by the indefiniteness and inaccuracy of the demands that appear on the record. Such papers as we are now pro-

ducing are from among the working papers of Professors Burns and Clark, which the Commission ruled were not subject to the subpoena. Since they were believed to be working papers of the Professors they were not produced under the subpoena.

In order to keep the record entirely straight, I shall take up this demand as follows:

12301 On page 9063, pursuant to the request of June 20th, referred to in Exhibit 971-34P. Exhibit 971-34P is a map and does not refer to any other map. This Exhibit 971-34P is now in evidence.

On page 9063 we were asked for a map of October 22nd, 1937, referred to in Exhibit 971-23A. That exhibit refers to no map, but does refer to an announcement of the Southern California Dealers dated October 22nd, 1927, not 1937. A copy of that letter is here tendered to be marked for identification.

Trial Examiner Norwood: Before you do that, I will state that I have determined the materiality and relevancy of the papers produced from the Medusa Portland Cement Company files, marked, as heretofore shown, 1955 to 1973, both inclusive, and these will be disposed of in the usual way.

Now, the paper just produced will be marked 1974, Commission's Exhibit 1974-A, B and C.

(The announcement of October 22nd, 1927, to all Southern California dealers referred to was marked "Commission's Exhibit 1974-A, B and C", for identification.)

Mr. Leisure: On page 9063 of the record counsel for the respondents were asked to produce a map of October 28th, 1927, referred to in Exhibit 971-23A. There is no

12303 map referred to in that exhibit. There is, however, a letter bearing that date, a dealer letter, which is on the letterhead of the Riverside Portland Cement Company. We are accordingly submitting that letter.

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood: You will mark these two papers as Commission's Exhibit 1975-A and B.

(The letter of October 28, 1927, of Riverside Portland Cement Company referred to was marked "Commission's Exhibit 1975-A and B", for identification.)

Mr. Leisure: Now, there is an undated map, one which

does not bear any date at all, in Exhibit 971-23A, of which we are now submitting a copy, which we believe to be the map referred to in the exhibit, and ask it be marked for identification.

Trial Examiner Norwood: Mark it Commission's Exhibit 1976.

(The map referred to was marked "Commission's Exhibit 1976", for identification.)

Mr. Leisure: On pages 9063 and 9064 of the record counsel for the respondents were asked to produce maps of July 29th, 1929, and July 9th, 1929, referred to 12303 in Exhibit 971-24E.

There were dealer letters and price lists dated July 29th, 1930, not 1929, and referred to in Exhibit 971-24E and -24F. I am submitting those. There are no maps referred to in Exhibit 971-24E.

Mr. MacIntyre: If your honor please, I would like in that connection to call attention not only to 971-24E, but also to 971-23B, the last paragraph of that letter, in which the statement does appear that: "This plan was received with great favor by the dealers and was continued in effect until the Code became effective, December, 1933, although on July 29, 1930, we raised prices from a very low mill base to a mill base of approximately $1.72 a barrel. At the time this change was made, we established a blanket price for all zones on the face of the map, that is, zones 1 to 20."

Now, while it isn't absolutely clear as referred to on the face of 971-24E, that becomes more clear when the counterpart to Mr. Leonard's notice is considered.

Of course, I couldn't in the few minutes that I wanted to restrict my statement on the record at that time refer to all this correspondence, but I attempted to, as clearly as I could in the few minutes I had, and wherever 12304 I referred to maps and the references have not been absolutely clear to Mr. Leisure, it is highly probable that he might have considered them inaccurate, and that I had based that reference to maps upon statements of zoning policies and plans as announced by the company.

It is probably true that some of these policies and plans, zoning plans, of the Riverside Company and the other California companies are not expressed in the form of maps, but in the form of letters, as those produced by Mr. Leisure here this morning, but all that we had seen up to

the time this request was made was in the form of maps. Therefore, the request was based upon our knowledge as to the form of them.

Mr. Leisure: Your honor, we appreciate what Mr. MacIntyre says, and we have not attempted to construe the requests strictly. Wherever there was anything that even approached what the demand seemed to indicate, even if it were a letter instead of a map, as indicated, we produced them.

Trial Examiner Norwood: Now, this last one has been marked here?

Mr. Leisure: No, sir, I am just tendering it now. It consists of three separate documents.

Trial Examiner Norwood: Mark that Commis-
12305 sion's Exhibit 1977-A, B and C.

(The letter of July 29, 1930, of the Riverside Cement Company referred to was marked "Commission's Exhibit 1977-A, B and C", for identification.)

Trial Examiner Norwood: Is the second one two sheets?

Mr. Leisure: The second document is two sheets, yes, sir.

Trial Examiner Norwood: Mark that 1978-A and B.

(The Southern California price list of July 29, 1930 referred to was marked "Commission's Exhibit 1978-A and B", for identification.)

Mr. Leisure: The third one consists of one sheet.

Trial Examiner Norwood: Mark that Commission's Exhibit 1979.

(The announcement of the Riverside Portland Cement Company, July 29, 1930, referred to was marked "Commission's Exhibit 1979", for identification.)

Mr. Leisure: In Exhibit 971-24F the fourth paragraph, there is a reference to a map of January 15th, 1930. This is apparently the map referred to in Exhibit 971—23B and which counsel ask for on page 9064 of the record.

Mr. MacIntyre: If I may, may I ask before we go on, to examine another map that I have here?

12306 (A short interruption.)

Mr. MacIntyre: All right.

Mr. Leisure: I am submitting this map to be marked.

Trial Examiner Norwood: Mark it Commission's Exhibit 1980, for identification.

(The map referred to was marked "Commission's Exhibit 1980", for identification.)

Mr. Leisure: There are also dealers' letters and price lists dated January 15th, 1930, which are referred to in Exhibit 971-23B, and we are also submitting those.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Were they requested, Mr. Leisure?

Mr. Leisure: They are referred to in that exhibit, and I presume that they may a part of what you want. I know of no request that refers to those, but I thought as a part of the picture you might want it.

Mr. MacIntyre: Did we ask for them specifically?

Mr. Leisure: There is no specific request.

Mr. MacIntyre: They might be marked for identification and then let's study them.

Mr. Leisure: Well, that would also apply to the other exhibits where you asked for maps and they are letters.

12307 Trial Examiner Norwood: Yes, indeed. Mark this first letter Commission's Exhibit 1981-A and B, for identification.

(The letter of January 15, 1930, of the Riverside Cement Company referred to was marked "Commission's Exhibit 1981-A and B", for identification.)

Trial Examiner Norwood: And mark this Commission's Exhibit 1982.

(The letter of January 15, 1930, of the Riverside Cement Company referred to was marked "Commission's Exhibit 1982", for identification.)

Trial Examiner Norwood: And this (indicating) will be marked Commission's Exhibit 1983-A and B.

(The price list of January 15, 1930 of the Southern California Dealers referred to was marked "Commission's Exhibit 1983-A and B", for identification.)

Mr. Leisure: On page 9064 counsel for the respondents were asked to produce a map of July 29th, 1930, referred to in Exhibit 971-24N.

Now, we have not been able to find any exhibit in evidence of that number.

Mr. MacIntyre: -24M or -N?

Mr. Leisure: -N. There is one marked for identification by that number, which is not an exhibit, but there is no map referred to in that exhibit, so there we have

12308 not been able to produce either a letter or a map.

Mr. MacIntyre: Again, isn't that a matter under

a zoning plan or a zoning policy that might have been specified not on the face of a map but on a letter?

Mr. Leisure: It may be those letters of July 29th, 1930 which you referred to, and we have submitted them. I don't know, but we have brought those.

On page 9064 we were requested to—

Trial Examiner Norwood: Is there something there to be marked?

Mr. Leisure: No, there was no map there.

Trial Examiner Norwood: Thank you.

Mr. Leisure (continuing): —but we have produced the letters which we think may be referred to.

Trial Examiner Norwood: Go ahead.

Mr. Leisure: On page 9064 counsel for the respondents were asked to produce a map of September 15th, 1934, referred to in Exhibit 971-25M.

In referring to that exhibit, there is no map referred to, but there are some price lists which have already been produced and which, I imagine, is what was intended at the time of the request.

On page 9064 we were requested to produce a map of December, 1934, referred to in Exhibit 971-25M.

12309 There is no map, as I have already said, referred to in that exhibit. There is a reference to a Riverside price list of that date, and we have produced all the Riverside price lists.

Mr. Wooden: Off the record, please.

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

Mr. Leisure: While we were in Southern California Mr. Burnett of the Monolith Portland Cement Company was given a subpoena to testify and to produce certain Monolith price lists.

Mr. Burnett was not called to the stand and, therefore, did not produce the documents under the subpoena, which he did turn over to us.

On October 15th, 1938, counsel for the Commission requested these documents and asked that they be produced, and we are submitting them here to be marked at this time.

I would like to point out that these documents were produced previously under the February 4th subpoena, and are already marked Commission's Exhibits 567-A to ten S's and 650-A to five L's.

Trial Examiner Norwood: What do you say about those letters? Are they duplicates to these?

Mr. Leisure: They are already duplicates.

12310 Trial Examiner Norwood: They are duplicates of what is already in evidence?

Mr. Leisure: They are not in evidence, but this is the second time they have been furnished.

Trial Examiner Norwood: That they have been furnished, oh, I see.

Mr. Leisure: You better take them and check them and see what ones you want.

Mr. MacIntyre: Your honor please, on that occasion I might state that the request made for Monolith price lists was for a complete set for a five year period, so that they would be on a comparative basis with other Southern California companies, at the time we were out there this summer.

The subpoena under which the price lists were produced, to which Mr. Leisure has referred as having been marked for identification, called for price lists for a far shorter period than the five years. For that reason we feel that this last request for the price lists calls for a complete set for the period, so as to be on a comparative basis with the lists furnished by the other California companies, and we would like those quite aside and apart from those produced under the subpoena, and, further, none produced under the subpoena were offered or received in evidence.

12311 Mr. Leisure: They weren't produced either.

Mr. MacIntyre: Neither were they retained. They were returned.

Mr. Leisure: You didn't call Mr. Burnett, so they weren't produced.

Trial Examiner Norwood: No, the California subpoena wasn't duces tecum. These this morning are produced under the request and not under the subpoena, as I understand.

Mr. Leisure: The only reason I mentioned it is that these were already given prior numbers.

Trial Examiner Norwood: Now, I suppose we might, since this is in a series and it is bound—

Mr. Leisure: Pardon me, but we will have to have them marked, if you are going to make any use of them, and if they are not going to be returned to them, we will have to

have each page numbered. Otherwise I can't refer to them in our own copies.

Trial Examiner Norwood: Very well. They will be numbered, according to the method we have been using, 1984 to 2134, both inclusive.

(The documents referred to were marked "Commission's Exhibits 1984 to 1990, both inclusive; 1991-A to K, inclusive; 1992 to 1996, inclusive; 1997-A to K, inclusive;
1998 to 2002, inclusive; 2003-A to H, inclusive; 2004
12312 to 2022, inclusive; 2023-A to D, inclusive; 2024; 2025-
A to G, inclusive; 2026; 2027-A and B; 2028-A and B; 2029; 2030; 2031; 2032-A to D, inclusive; 2033; 2034; 2035; 2036-A to D, inclusive; 2037; 2038; 2039-A to D, inclusive; 2040-A to E; 2041-A and B; 2042 to 2048, inclusive; 2049-A to H, inclusive; 2050; 2051-A to G, inclusive; 2052 to 2062, inclusive; 2063-A, B and C; 2064; 2065; 2066-A and B; 2067; 2068; 2069-A and B; 2070; 2071-A, B and C; 2072 to 2074, inclusive; 2075-A to G, inclusive; 2076; 2077; 2078; 2079-A to E, inclusive; 2080 to 2090, inclusive; 2091-A and B; 2092; 2093; 2094-A and B; 2095; 2096-A to E, inclusive; 2097 to 2109, inclusive; 2110-A and B; 2111 to 2122, inclusive; 2123-A, B and C; 2124 to 2134, inclusive", for identification.)

Trial Examiner Norwood: Now, is that all?

Mr. Leisure: May I go off the record?

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood: Now, that is all that is to be proffered, is it?

Mr. MacIntyre: I would like to go on the record for one
statement, your honor please, with respect to the
12313 documents which have been produced here this morn-
ing and marked, for identification, as Commission's Exhibits 1974 to 1983, inclusive. I make reference to the statement of Mr. Leisure to the effect that these have been considered by counsel for the respondents as working papers and not called for under subpoena duces tecum of the Commission, which was served upon The Cement Institute for the Clark-Burns material.

In that connection we would like to observe that the Commission did call for all communications and attachments to those communications, which passed between Professors Clark and Burns and any representatives of any respondents to this case. Now, it was clear from the docu-

ments to which I made reference during the California hearing on pages 9062 to 9065, when we asked for the production of these documents, that the documents were in the nature of communications or attached to communications between the respondents and the Professors Clark and Burns and, therefore, covered by the subpoena duces tecum. Whether they were later used, incidentally, as working sheets, of course, we ha e no way of knowing and we do not feel that the Commission restricted the subpoena in that respect.

Mr. Leisure: Well, I think Mr. MacIntyre may have misunderstood my statement. I wasn't raising any
12314 question as to whether or not they were called for.

My statement was that they were among the working papers and for that reason we hadn't located them and they had not been produced. We had thought they were working papers and they had not been located. I am not arguing the point that they are not properly produced; I am not saying that.

Mr. MacIntyre: Well, I beg Mr. Leisure's pardon. I understood him to say he did not feel that these were called for by the subpoena.

Mr. Leisure: No, I did not intend to state it that way.

Trial Examiner Norwood: Have you any further documents?

Mr. Leisure: Off the record, please.

Trial Examiner Norwood: Off the record.

(A discussion ensued off the record.)

Trial Examiner Norwood: Now, is there anything further?

Mr. Leisure: Yes, sir, on page 4968—

Trial Examiner Norwood: Wait a minute. These (indicating) necessarily must be the last proffer there.

Mr. Leisure: Then I will do this on Tuesday.

Trial Examiner Norwood: After they number
12315 the others, yes.

Mr. Leisure: I can put them in in five minutes.

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Yes.

(A discussion ensued off the record.)

Trial Examiner Norwood: All right, go ahead.

Mr. Leisure: On page 4968 of the record counsel for the respondents were requested to produce from the Pennsylvania-Dixie Cement Corporation "the replies by the

Penn-Dixie Cement Corporation—to such letters as are referred to in Exhibit 1062," and also to produce any other correspondence between the Penn-Dixie and the Illinois Central System regarding the same subject.

With respect to that corporation, the Penn-Dixie, I was unable to locate any such documents, but they did contact the Illinois Central Railroad which supplied them with the correspondence which I am about to present. I am producing copies of that material now, and I request that it be marked for identification. These copies were supplied by the Illinois Central, and we make no point of the fact that they are not originals.

Trial Examiner Norwood: Mark them—

Mr. Wooden: Does that mean, Mr. Leisure, you waive any formal proof or further proof of identification?

Mr. Leisure: Well, I think so, Mr. Wooden. I
12316 would like, as they are offered, to take another look at them.

Mr. Wooden: All right.

Mr. Leisure: I think that is what it means, but I would like to look at them before they go in.

Mr. Wooden: All right.

Trial Examiner Norwood: Let them be marked Commission's Exhibits 2135 to 2148, both inclusive.

(The correspondence between Pennsylvania-Dixie Cement Corporation and Illinois Central System referred to was marked "Commission's Exhibits 2135 to 2147, both inclusive, and 2148-A and B", for identification.)

Mr. Leisure: I think that covers it.